
(2002) 04 SC CK 0115
In the Supreme Court Of India
Case No : Civil Appeal 2406 of 2002

J.M. Biswas

APPELLANT

Vs

N.K. Bhattacharjee and Others

RESPONDENT

Date of Decision : 02-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : AIR 2002 SC 1649 : (2002) AIRSCW 1570 : (2002) 4 ALLMR 239 : (2002) 3 ALT 3 : (2002) 50 BLJR 893 : (2002) 93 FLR 715 : (2002) 2 JCR 128 : (2002) 3 JT 587 : (2002) 2 LLJ 523 : (2002) 3 PLJR 220 : (2002) 3 SCALE 245 : (2002) 4 SCC 68 : (2002) 2 SCT 774 : (2

Hon'ble Judges : D. P. Mohapatra, J;Brijesh Kumar, J

Bench : Division Bench

Advocate : V.A. Mohta, Manish Pitale and V.N. Raghupathy, for the Appellant; Y. Prabhakara Rao, J.P. Mishra, P. Mishra and Shankar Divate, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Mohapatra, J.—Leave granted.

2. The litigation giving rise to the present appeal relates to affairs of the South Eastern Railway Mens' Union (hereinafter referred to as 'the Union') with membership of 1,34,000 railway employees spread over six States covering the South Eastern Railway Zone. Though the appellant as well as respondent no. 1 have ceased to be office bearers of the Union, the litigation initiated at a point of time when they were members of the Union still continues.

3. This appeal, filed by the defendant, is directed against the revisional order passed by the Calcutta High Court in C.O. No. 2264/99 in which the High Court declined to interfere with the order of temporary injunction passed on 17th August, 1999 by the Additional District Judge, 3rd Court, Alipore, in Miscellaneous Appeal No. 179/99 arising out of the Title Suit No. 105/98 on the file of the 6th Civil Judge (Senior Division), Alipore, South Calcutta.

4. The aforementioned suit was filed by the plaintiff, who is respondent no. 1 herein, seeking a declaration that he is a duly appointed office bearer of the Union and for an injunction restraining the defendant from interfering with his functioning as a General Secretary of the Union. In the said suit the plaintiff filed an application under Order 39 Rules 1 and 2 of the CPC seeking interim injunction.

5. The trial Court, on consideration, rejected the prayer for temporary injunction. The Appellate Court allowed the appeal filed by the plaintiff and passed an order of interim injunction in the following terms:

"Defendant/respondent No. 1, his men and agents by way of temporary injunction are restrained from intervening the day to day administration and other activities of the Central Executive Committee and also that of General Secretary including operation of bank account with State Bank of India, Garden Reach Branch in the name of said Union jointly with the proforma defendant No. 2 till the disposal of the suit or till the terms of the General Secretary and Finance Secretary are exhausted as per rules laid down in the constitution of the South Eastern Railway Men's Union, whichever is earlier or if he is not removed by his association strictly complying with the rules as laid down in the constitution afresh."

6. The defendant, who is appellant herein, challenged the said order in revision before the High Court. The High Court, as noted earlier, dismissed the revision petition by the order which is under challenge in the present proceeding. The suit is still pending in the trial Court.

7. The main thrust of the submissions made by Shri V.A. Mohta, learned senior counsel appearing for the appellant, is that the High Court was in error in not taking into consideration certain subsequent events which have a material bearing on the issues involved in the case. Elucidating his contention, Shri Mohta submitted, that in the meantime, three elections have been held and different sets of office bearers, excluding the respondent No. 1, have been elected. The newly elected office bearers have been recognized by the management of the South Eastern Railway; Respondent No. 1 is neither an office bearer of the Union (General Secretary) nor a Member of the Union. In such circumstances, Shri Mohta contends that the High Court should have vacated the order of interim injunction, which has been creating difficulties on the part of the office bearers of the Union for day-to-day functioning, particularly in operation of the bank account of the Union. According to Shri Mohta, respondent No. 1, who was elected as Secretary in the biennial elections held on 5th November, 1997, was suspended by the Central Executive Council of the Union with effect from 30th November, 1998. The attempts made by respondent No. 1 for getting interim relief against his suspension did not succeed. Thereafter, respondent No. 1 was removed from the post of General Secretary of the Union on 8th May, 1999. When the Joint Secretary of the Union issued a notice on the 12th August, 1999 for holding the proposed meeting on 15th September, 1999 the respondent filed

a writ petition challenging the said notice. Therein the learned Single Judge passed an order of stay. The said order was vacated by the Division Bench on 10th September, 1999. On the 14th September, 1999 respondent No. 1 wanted to withdraw the writ petition; the writ petition was dismissed as withdrawn.

8. In the meantime, on 17th August, 1999 the appeal filed by the respondent against the order of the trial Court rejecting the prayed for interim injunction, was allowed by the Appellate Court. A fresh election was held on 15th September, 1999 and new office bearers were elected. The respondent was not elected as an office bearer in the said election. He filed another suit C.S. No. 258/99, seeking injunction against the newly elected office bearers and sought an order of interim injunction. The High Court declined to pass such order. However, the Appellate Court by an order dated 16th September, 1999 granted interim injunction restraining the newly elected office bearers. The High Court, by the order dated 12.10.1999, allowed the revision petition filed by the appellant and passed a conditional order. However, the suit was withdrawn on 11th September, 2000. Yet another election was held in the year 2001 and the office bearers elected in that election have been recognized by the South Eastern Railway Administration. In these circumstances, Shri Mohta contended, that the order of interim injunction should be vacated without further delay.

9. The learned counsel appearing for respondent No. 1 on the other hand contended that the respondent neither filed any writ petition challenging the suspension order nor did he file the suit seeking injunction against the newly elected office bearers. These proceedings were filed by persons set up by the appellant herein; this was a mala fide move against the respondents. The learned counsel, however, submitted that since the appellant seeks to challenge the interim injunction order on the basis of the subsequent events which have taken place, then it is appropriate that he should move the Appellate Court for modification of the order of injunction. Since the said order was passed by the Appellate Court, the learned counsel also submitted, that the elections alleged to have taken place are invalid, as they were not held in accordance with the constitution/rules of the Union. The learned counsel contended that in fairness to the parties and for the sake of proper management of the affairs of the Union this Court should order a fresh election to be held for electing the office bearers of the Central Council of the Union.

10. From the narration of facts and the contentions raised on behalf of the parties, it is clear that the dispute raised in the case has lost its relevance due to passage of time and subsequent events which have taken place during the pendency of the litigation. As noted earlier, the dispute in the case relates to election of office bearers of the South Eastern Railway Mens' Union. The dispute arose at a point of time when both the appellant and the respondent No. 1 were members of the said Union. Now both have ceased to be members of the Union. Further, successive elections have been held to elect office bearers and the office bearers so elected have been recognized by the management. In the

circumstances, continuing this litigation will be like flogging the dead horse. Such litigation, irrespective of the result, will neither benefit the parties in the litigation nor will serve the interest of the Union. Accepting the contentions raised on behalf of respondent No. 1 that the successive elections held in the meantime were invalid because he was not permitted to participate in it and to quash all such elections and direct holding of fresh elections under the supervision of the Court, will be contrary to democratic functioning of the employees Union. Furthermore, Courts in the present situation of exploding dockets can ill afford to stand time in such an exercise.

11. In the result, the appeal is allowed. The judgment/order dated 27th February, 2001 in C.O. No. 2264 of 1999 which is under challenge in the appeal is set aside. Miscellaneous Appeal No. 179/99 pending before the Additional District Judge, 3rd Court, Alipore, or any other Court to which it might have been sent on transfer, will be dismissed as infructuous. Title Suit No. 105/ 98 on the file of the 6th Civil Judge (Senior Division), Alipore, South Calcutta will be heard and disposed of expeditiously as far as possible within three months of receipt of intimation of this order. The interim orders passed by the Courts below in the suit and the appeal are vacated. Parties to bear their respective costs.