
(2008) 04 MP CK 0066
In the Madhya Pradesh High Court

Kunwar Singh Mawai

APPELLANT

Vs

Anoop Singh Tomar and Others

RESPONDENT

Date of Decision : 23-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Trade Unions Act, 1926 — Section 28

Citation : (2008) 118 FLR 519 : (2009) 1 LLJ 128 : (2008) 3 MPJR 64 : (2008) 4 MPLJ 342

Hon'ble Judges : S.M. Samvatsar, J;A.K. Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arun Mishra, J.

Shri Kunwar Singh Mawai has come up in the writ appeal aggrieved by an order dated January 8, 2008 passed by single Bench of this Court in W.P. No. 3091/2006 thereby setting aside the Order (P. 1) dated June 14, 2006 passed by the Industrial Court directing Industrial Court/Registrar to pass appropriate order in accordance with law and decide the dispute after hearing the affected parties within a period of three months.

Respondents No. 1 and 2 namely Anoop Singh Tomar and Vinay Gupta preferred a writ petition before the single Bench. It was averred by them that they were members of the J.K. Tyre Trade Union. The necessary fee had already been collected from their salary. The term of the union of the Employees was expired on March 12, 2006 and thereafter the new elections were to be conducted. Petitioners and other employees of the factory moved an application (Exhibit P-2) on March 23, 2006 for conducting election afresh. Application was moved before the Registrar Trade Unions. Application (Exhibits P-3 and P-4) were filed on March 25, 2006 and March 29, 2006 respectively before Registrar Trade Unions, Bhopal for conducting election afresh. The Registrar as per order (Exhibit P-5) dated March 31, 2006 asked the General Secretary of the old union to explain as

to the elections conducted in the year 2003. On March 27, 2006 respondent No. 1 issued notification (Exhibit P-6) to hold election on April 9, 2006. Kunwar Singh Mawai cancelled the election and accordingly the Registrar as per order (Exhibit P-7) dated April 10, 2006 directed to hold election between April 20, 2006 to April 26, 2006. Shri Kunwar Singh Mawai wanted to conduct the election outside the factory premises contrary to the earlier practice and accordingly a complaint was filed to the Registrar and Registrar as per order (P-18) dated April 18, 2006 stayed the holding of election outside the factory premises. In spite of direction Kunwar Singh Mawai wanted to conduct the election on April 23, 2006 outside the factory premises. Matter of non-compliance of the order dated April 18, 2006 was reported to the Registrar Trade Union and accordingly on consideration of the complaint filed by petitioners and other employees? As per order dated April 21, 2006 the direction was again reiterated by the Registrar Trade Union. Another order (Exhibit P-11) dated April 22, 2006 was passed by the Registrar staying holding of entire election. Unfettered by the 3 orders so-called election was conducted on April 23, 2006 at a different place in which only a group employees of union participated in violation of directives issued by Registrar, despite of stay order granted by the Registrar. On June 12, 2006 Shri Kunwar Singh Mawai filed an application u/s 28-J of the Indian Trade Unions Act, 1926 before the Industrial Court at Gwalior which was decided finally on June 14, 2006 at camp Rewa. In the application General Manager, J.K. Tyre Banmore Kamgar Sangh, District Morena and Registrar were arrayed as respondents. Industrial Court without issuing notices to any of the respondents arrayed in the application, passed an ex-parte order (P-1) on June 14, 2006 declaring Kunwar Singh Mawai as elected General Secretary of the J.K. Tyre Union Banmore Kamgar Sangh. Aggrieved thereby writ petition was preferred before the single Bench, assailing the order of Industrial Court on the ground that without waiting for decision of the Registrar, order could not have been passed by the Industrial Court. Case was filed before, Industrial Court at Gwalior. It was transferred to Rewa and without issuance of any notice to any party the impugned order (P-1) was passed by Industrial Court. During the stay no election could have been held. Petitioners and other members of Trade Union who objected the election and on whose instance the stay order granted by the Registrar were not made parties, no notice was issued to them. The matter with respect to conduct of election was pending consideration before the Registrar, still without notice, order was passed by the Industrial Court. There was no election held in the eye of law, management was not heard before passing the impugned order. Industrial Court could not have taken up the matter during the vacation at Rewa, it was required to be heard at Gwalior.

In the return/additional return filed by respondent No. 1 it was submitted that petitioner No. 1 Anoop Singh Tomar is not member of J.K. Tyre Banmore Kamgar Sangh, Banmore. Letter (R. 1.3) was written by petitioner No. 1, for removal of the membership from the union, contribution was also not deducted, thus, petitioner No. 1 cannot be said to be interested member in the affairs of the

union. Petitioner No. 2 was member as per the list at Section No. 768 of which membership fee was paid. He did not raise any grievance before the authority, thus, petitioner No. 2 could not be said to be aggrieved person interested in assailing the order passed by the Industrial Court. No caveat application was filed before the Industrial Court. The writ petition is not maintainable against the respondents. For holding elections, election officer was empowered. Shri S.P. Sharma was appointed as Chief Election officer. Shri R.N. Verma was appointed as Election officer. Shri Randhir Singh and Shri Ashok Goswami were appointed as Asstt. Election officer. The management provided the list of 768 workmen. Election programme was published on April 7, 2006. Election was not concluded. In spite of that Registrar was approached. Registrar of Trade Unions directed the Trade union vide letter dated April 10, 2006 to conduct the election impartially and without influenced by anyone. Instructions were received to hold the election between April 20, 2006 to April 26, 2006 and the Chief Election officer was to be appointed by the management or to be Government Officer. It was not a legal condition. The management could not have appointed Election officer to conduct impartial I election, therefore, this condition was not followed by the union and election was held on April 23, 2006. Kunwar Singh Mawai was elected General Secretary and J.P. Bhardwaj was elected as President, other office bearers were also elected. Report was submitted by the Chief Election Officer. Meeting was attended by members required for constituting the quorum.

On merits the respondent No. 1 in the reply contended that Registrar had no authority to cancel the election held on April 23, 2006, election officer decided to hold the election at Banmore. Election was held outside the campus 2 of the factory. In peaceful manner election was held at "Milan Vatika house." Registrar was not empowered to stay the election. He had no authority to issue such a direction. Objection (R. 1.17) was submitted before the Registrar on 2 April 26, 2006. As per provisions of Section 28-J of the Trade Unions Act, 1926 Registrar has no power to supersede the order passed by the Industrial Court passed in a proceeding u/s 28-J of the Trade Unions Act. The petition was filed before the Industrial Court at Gwalior, as there was summer vacation. Industrial Court was holding sitting at Rewa, therefore, case was entertained at Rewa. Case was transferred with specific endorsement with caveat application was filed.

In the return filed by respondent No. 2, J.K. Industries Ltd. it was contended that order was passed by the Industrial Court at Rewa though matter was pertaining to the jurisdiction at Gwalior, it was passed without following the principles of natural justice, out rightly without issuance of notice final order has been passed by the Industrial Court in flagrant misuse of the power. Rule of audi alteram partem has not been adhered to. There was denial of right to participate in the election to large number of workmen, consequently election held was illegal. There was fight between two groups of workmen of the same union. The unrest of workers is going to create law and order problem to management. Industry is likely to be affected adversely. The Industrial Court ought to have issued the notice to the respondents arrayed in the application filed u/s 28-J and to

interested parties. Registrar had stayed the election and was in seisin of the matter, inspite of that Industrial Court has passed the final order without hearing any party. Prohibitory injunction order be passed from acting as representative of workmen till final decision resolving of dispute pertaining to representative of union and its office bearer is taken and order (P-1) be quashed.

The learned single Judge as per the impugned order dated January 8, 2008 has; quashed the order (P-1) dated June 14, 2006. It has been held that the petitioners have locus standi to challenge the order passed by the Industrial Court. The Industrial Court/Registrar are left free to pass appropriate order in accordance with the law and decide the dispute within a period of three months.

Shri Alok Sharma, learned Counsel for appellant, has submitted that the respondents No. 1 and 2 had no locus standi to assail the order passed by the Industrial Court u/s 28-J(2) of the Trade Unions Act, 1926. He has also submitted that the Registrar had no jurisdiction to pass the stay order as the petitioner could not be said to be aggrieved party, writ petition was not maintainable at their instance. The respondents No. 1 and 2 were not required to be heard by the Industrial Court.

Shri Gaurav Samadhiya, learned Counsel appearing on behalf of respondents No. 1 and 2, has supported the order. He has submitted that petitioners are member of the same union as that of Shri Kunwar Singh Mawaj. Order was passed by the Industrial Court in flagrant violation of law, it was a nullity, no notice to any of the party was issued. The election was not held in the method and manner directed by the Registrar and refrain order issued by the Registrar was violated. Intentionally election was not held outside gate or factory premises to deprive participation to opposite faction. Material facts were suppressed before the Industrial Court. The matter was required to be heard by the Industrial Court at Gwalior, it was taken at camp Rewa by the Industrial Court. Caveat was filed, inspite of that no notice to any of the party was issued even the respondents who were arrayed in the application were not noticed and in flagrant violation of rule of audi alteram partem, impugned order was passed contravening the mandate of Section 28-J of the Trade Unions Act.

Shri Prashant Sharma, learned Counsel for respondents No. 3 and 5, has also supported the submission raised by Counsel appearing on behalf of respondents No. 1 and 2.

It appears that Registrar Trade Union directed the elections to be held, The Registrar as per communication (P-7) dated April 10, 2006 directed the elections to be held outside the main gate of the factory or in some other shed of the factory. The election was to be held under the supervision of Shri S.S. Dixit, Asstt, Labour Commissioner. Registrar also ordered that there shall be no outside interference in the election, adequate police arrangement be made, so that labour comprising the union participate in the election. It was brought to the notice of the Registrar that election was not being held in the method and

manner directed but at some other place, hence, Registrar stayed the election and posted the hearing on April 25, 2006 at Bhopal. In spite of the aforesaid stay order election was held in violation of directives issued by the Registrar at some other place and in some other manner. On April 22, 2006 direction contained in the order (P-11) was issued by the Registrar Trade Union not to violate the order and not to conduct the election on April 23, 2006. The parties were aware of the orders passed by the Registrar, still it appears that as per version of the appellant Kunwar 4 Singh Mawai, election was held at different place at "Milan Vatika house" in which there was allegedly participation of 349 workers and certain office bearers were elected. Registrar was approached. Registrar was in seisin of the 5 matter, thereafter an application (P-13) was filed on June 12, 2006 by Kunwar Singh Mawai before the Industrial Court at Gwalior. In the application General Manager, J.K. Tyre Banmore, Morena and Registrar, Trade Union were arrayed as respondents. The application (P-13) was filed u/s 28-J of the Trade Unions Act, 1926.

In the application (P-13) it was mentioned that Kunwar Singh Mawai was elected as General Secretary and in compliance of the Regulation 9 framed under the Act, intimation was given to the Registrar on April 26, 2006. The approval of office bearers was not made by the Registrar so far. The management did not pay the bonus by May 30, 2006. Respondents No. 1 and 2 intended to handover the work of the union to the management as apparent from the letter dated March 25, 2006 of the management and the Registrar's letter dated March 31, 2006 and April 10, 2006. Out of 1050 employees, 288 employees were not members of the union and contribution of 708 members was deposited by the management after deducting from the pay bills and the Registrar wanted that 288 employees should also be given right to vote of which they had no right, Registrar did not conduct enquiry in terms of Section 28-J of the Trade Unions Act and did not proceed to register the names. There was no other claimant claiming right as office bearer of union, he has assumed the office on May 1, 2006, thus, he be declared as President of J.K. Tyre, Banmore Kamgar Sangh, District Morena.

The Industrial Court took up the matter at Rewa and without issuance of notice to the Registrar or to the General Manager or to objectors before the Registrar, Trade unions, passed final order within two days of the filing of the application at Gwalior. Application was filed on June 2, 2006 at Gwalior, final order was passed by the Industrial Court after 2 days on June 14, 2006, declaring Kunwar Singh Mawai as General Secretary and Jai Prakash Bharadwaj as President, in view of the meeting dated April 23, 2006, the Industrial Court has held that there was no dispute that election was held in accordance with law. Registrar was not having right to inquire into the election, interference made by the Registrar was not proper, the impugned order has been set aside by the single Judge.

Section 28-J of the Trade Unions Act as applicable in Madhya Pradesh is quoted below:

28-J Dispute as to officer of registered Trade Union: (1) If there is any dispute as to who is the lawful officer of a registered Trade Union, any person claiming to be such an officer or the Registrar may refer the dispute to the Industrial Court in such manner (and on payment of such fee not exceeding ten rupees) as may be prescribed:

(Provided that no fee shall be payable by the Registrar).

(2) On a reference being made under Sub-section (1), the Industrial Court shall, after hearing the parties to such dispute and recording such evidence as it may consider necessary, decide the dispute and declare who is the lawful officer. This decision of the Industrial Court shall be final and shall not be called in question in any Court of law.

(2a) The costs of and incidental to the provisions of this Section shall be in the discretion of the Industrial Court and the Industrial Court shall have full power to determine by whom the whole or any part of such costs shall be paid.

(2b) If any proceeding under this Section, the Industrial Court is, after hearings the person making the reference, satisfied that the ground on which the claim has been preferred is false or vexatious, the Court may after recording its reasons for holding" such claim to be false or vexatious, make an order for the payment of costs by way of compensation which shall not be less than fifty rupees and not exceeding two hundred rupees to such person or persons, as it may specify in the order.

(3) No Civil Court shall entertain any suit or other proceedings in respect of any dispute which has been referred to the Industrial; Court under Sub-section (1) and is pending before such Court and if any such suit or proceeding is pending in a civil Court on the date of the reference the civil Court shall, on receipt of a notice from the Industrial Court, cease to exercise jurisdiction in respect thereof and shall forthwith transfer the record of such suit or proceeding to the Industrial Court.

Sub-section (1) of Section 28-J of the Trade Unions Act lays down that if there is any dispute as to who is the lawful Officer of a registered Trade Union, any person claiming to be such an Officer or the Registrar may refer the dispute to the Industrial Court in such manner as may be prescribed. In the instant case, dispute has arisen whether any valid election in the eye of law was at all held. The Registrar admittedly had issued certain directives to hold the elections outside the gate of the factory or in some other shed, that was not followed, supervision of Asstt. Labour Commissioner was ordered which order was also violated and so-called election was held, without complying the directives, the Registrar had to ultimately stay the election as directives were not being complied with and fixed the date on April 25, 2006 for hearing objection as to place of election. It is obvious that there was serious, dispute whether any election was in fact held or it was just to ensure participation of a group of workers, that election was held at "Milan Vatika house" of the Trade Union in

question; though the Registrar was hearing the matter but all of a sudden without mentioning the material facts in the application (P-13), the Industrial Court Was approached by Kunwar Singh Mawai.

When a person is claiming lawful officer of the union and there is dispute with respect to his being such a lawful officer, the procedure is prescribed under Sub-section (2) of Section 28-J, on reference being made under Sub-section (1) the Industrial Court is mandated to hear the parties to such dispute and record such evidence as it may consider necessary, thereafter Industrial Court is competent to decide the dispute and declare who is the lawful officer. In such a proceeding workers have right to object and have the right of participation to say whether any election has been held or not, they cannot be said to be disinterested, they are definitely aggrieved persons, in case some person is illegally claiming himself to be elected office bearer and wants to foist himself by usurping office as their representative; no notice to Registrar neither even to the management was issued nor to the objectors before Registrar. Registrar had directed the election to be held in particular manner, it was not held in that manner and thereafter without notice to the Registrar and to the management or to the objectors before the Registrar who had filed the petition as to the illegalities being committed by the particular group of union, it was not open to the Industrial Court to allow the application in ex-parte without issuance of notice to interested parties and admittedly notice was not issued to anyone. No opportunity was given of hearing though there was dispute and it was illegally held by Industrial Court that there was no dispute as to, holding of election.

In our considered opinion allegedly effort was made by one group to usurp the status of office bearer, the members of the union contesting the matter before Registrar had the right to maintain writ petition assailing the order passed (P-1) passed by the Industrial Court. Locus standi cannot be denied to a worker to assail order (P-1) obtained in ex-parte u/s 28-J allegedly usurping the management of the union, the members of the union have the right to vote and to see that the office bearer is duly elected, the right to assail the order in a writ petition cannot be denied to a worker of the union. Though the status of petitioner No. 1 had been disputed whether he is member of the union but there is no dispute that petitioner No. 2 is member of the union, thus it could not be said that writ petition filed before the single Bench was not maintainable. In our opinion, it was also open to any member of union to object to the declaration sought u/s 28-J of the Trade Unions Act and to claim hearing in the reference.

We are compelled to observe that the Industrial Court has acted in most, arbitrary method and manner, without adhering to the basic fundamental of the judicial, procedure and statutory mandate cast under Sub-section (2) of Section 28-J of the Trade Unions Act, de hors of the question whether Registrar has jurisdiction or not to say who is lawful officer of the Trade Union, when the Registrar on objections being submitted, had issued the directions for securing fair election, it was incumbent upon the Industrial Court to issue notice to the

Registrar and to objectors etc. which was not done, notice was not issued to the opposite faction.

It passes comprehension how the order could have been passed in ex-parte by the Industrial Court sitting at camp Rewa whereas matter was required to be heard at Gwalior. It appears that attempt was made to secure the order at Rewa in ex-parte without hearing. Single Bench has found that caveat was also filed and Industrial Court has wrongly mentioned in the order that no caveat was filed. There is nothing to doubt the correctness of finding recorded by the single Bench that caveat was filed and that was ignored by the Industrial Court, the order is rendered nullity due to flagrant procedural violation of rule of audi alteram partem forming part of principles of natural justice.

Industrial Court acted in undue haste in passing the final order in ex-parte which is not befitting to the basic concept of justice, in violation of the provisions of Section 28-J of the Trade Unions Act. There was dispute between the two groups, that has been ignored by the Industrial Court. In the circumstances, we have no hesitation to say that order passed by the Industrial Court was totally uncalled for, it was nullity and has been rightly quashed, no right accrued to any person on the basis of the aforesaid order.

Learned Counsel for appellant has relied upon the decision of Jharkhand High Court in Ram Chandra Singh and Ors. v. State of Bihar and Ors. 2002-IV-LLJ-1069 (Jhar) in which it was laid down that Registrar cannot go into the validity of the election. Similar opinion was expressed in Tata Workers Union v. State of Jharkhand and Anr. 2002-III-LLJ-474 (Jhar) in which it was observed that Registrar cannot postpone the election and intervene in the matter, that is not the question to be decided at this stage as in the instant case dispute is whether the provision of Section 28-J of the Trade Unions Act was violated by the Industrial Court while passing the impugned order (P-1), as such we refrain from adjudicating upon the aforesaid aspect as to the powers of the Registrar at this stage.

Learned Counsel for appellant has also relied upon a decision of this Court in N. Prasad and two Ors. v. I.P. Chouksey and Ors. 1999 (93) FLR 183 in which an application was filed u/s 28-J of the Trade Unions Act by a person, who could not have; approached the Industrial Court; writ petition was filed challenging the jurisdiction of the Industrial Court, legality and propriety of its order, N. Prasad and two others had filed writ petition, that was held to be, maintainable. The decision does not support the cause espoused. In the aforesaid case an illegal order had been passed to assail the same locus of N. Prasad and two others was upheld, thus, decision counters the submission raised by the appellant as to the locus standi of the petitioners before the single Bench to assail the order passed by the Industrial Court in a writ petition under Articles 226/227 of the Constitution of India.

Counsel for appellant has referred yet another decision in Falguni Chakraborti v.

State of West Bengal and Ors. 2002-IV-LLJ (Suppl) 1091 (Cal) (NOC) in which same observations were made with respect to the power of Registrar u/s 28-J of the Trade Unions Act. It was also observed in the context of intra union rivalry, one of reliefs claimed in petition was for injunction against rivals who have been declared elected, rival union however was not made party to proceedings, the Court held that it was necessary to make rival as a party, as there was non-joinder, petition was hit by principle of audi alteram partem, no relief could be granted in the absence of rivals, same was the situation before the Industrial Court, thus, the decision militates against the submission made by Counsel for appellant.

Counsel for the appellant has also relied upon decision of the Apex Court in Borosil Glass Works Ltd. Employees' Union v. D.D. Bamode and Ors. AIR 2001 SC 378 : (2001) 1 SCC 350 : (2001) 1 MLJ 144 : 2001-I-LLJ-171, in which locus standi to seek Registrar's reference was not available to a person who was not a member but had merely applied for membership of the trade union. In the instant case, petitioner No. 2 was admittedly a member, petitioner No. 1 also claims himself to be a member, though that is disputed, we need not go into that question as there is no dispute as to the membership of petitioner No. 2, the decision is, thus, of no help to the appellant.

Resultantly, we find that there is no merit in the writ appeal. Same is liable to be dismissed.

We hereby dismiss the same.

No costs.