

(2013) 01 KL CK 0055

In the High Court Of Kerala

Case No : Writ Petition (C) No. 26415 of 2012 (B)

L.S. Sibbu

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Trade Unions Act, 1926 — Section 3, 5, 6

Citation : (2013) 137 FLR 386 : (2013) 1 ILR (Ker) 452 : (2013) 1 KHC 155 :
(2013) 1 KLJ 418 : (2013) 1 KLT 184 : (2013) 2 LLN 161 : (2013) 3 SCT 395 :
(2014) 1 SLJ 483

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : Shaji P. Chaly and Sri. R. Sanjith, for the Appellant; P. Parameswaran Nair, ASG of India and Sri. K.S. Rajeev, (Aluva), for the Respondent

Judgement

V. Chitambaresh, J.—Can the election process to the Managing Committee of a trade union registered under the Trade Unions Act, 1926 ("the Act" for short) be interdicted in a Writ Petition under Article 226 of the Constitution of India?

The issue arises in regard to the election to the Managing Committee of "Aviation Industry Employees Guild" ("the Guild" for short) originally slated on 10.11.2012 which however did not take place in view of the interim order in this writ petition. The Guild which is a union registered under the Act is having its main office at Mumbai in the State of Maharashtra with branch offices at northern, southern, eastern and Kerala region. The Managing Committee of the Guild shall have at least 2 members - one technical and another non-technical - from each region who are to manage its financial and organisational affairs. The tenure of the Managing Committee shall be three years and election officers have been appointed to conduct election in the various regions of the Guild. The petitioner claiming to be a member of the Guild has filed the writ petition to stall the election to the Managing Committee on the premise that the election in the Kerala region is not yet complete. The complaint of the petitioner in essence is

that the Kerala region would remain unrepresented in the Managing Committee of the Guild if the election process is permitted to surge ahead.

2. The Guild and one of its election officers have filed a counter affidavit contending inter alia that the petitioner had resigned from its primary membership long ago and cannot prosecute the writ petition. The very maintainability of the writ petition is challenged on the ground that the Guild registered under the Act is not a "State" coming within Article 12 of the Constitution of India.

It is also contended that the remedy, if any, of the petitioner is to move the Registrar of Trade Unions appointed by the Government u/s 3 of the Act who has a bounden duty to supervise the conduct of election. The writ petition should not have been filed without moving the Registrar of Trade Unions at the first instance whose seat of administration is at Mumbai only. It is further pointed out that steps are afoot to complete the election process in the Kerala region of the Guild shortly and that electees from other regions cannot represent the Kerala region.

3. I heard Mr. S.P. Chaly, Advocate on behalf of the petitioner, Mr. P. Parameswaran Nair, Assistant Solicitor General of India on behalf of respondents 1 and 2 and Mr. K.S. Rajeev, Advocate on behalf of respondents 3 and 4 in the writ petition.

4. A trade union like the Guild registered under the Act is neither an instrumentality nor an agency of the State discharging public duty and is therefore not amenable to the writ jurisdiction of this Court. The question is no longer res integra and this Court though in the context of police protection observed in *Chemosyn (P) Ltd. and Others Vs. Kerala Medical and Sales Representatives' Association*, as follows:-

12. The State has no deep or pervasive control or domination in the composition or function of the union. There need not be any substantial financial assistance by the Government. A trade union, a body corporate, is not a statutory body.

It is not created by statute or incorporated in accordance with the provisions of a statute.

13. The activities of the union are not closely related to governmental functions and are not of public importance. The privileges conferred or the immunities enjoyed by the Union do not impose any public duty on the part of the union. There is no scope for expanding the content of the expression "authority" to cover a trade union. In this view it has to be held that the first respondent is not amenable to the jurisdiction of this Court under Article 226 of the Constitution of India. There is no scope for issuing any writ of mandamus as prayed for....

The following quote from the *Administrative Law* by Sir William Wade and Christopher Forsyth is also profitable:

If for example a minister or a licensing authority acts contrary to the principles of

natural justice, certiorari and mandamus are standard remedies. But if a trade union disciplinary committee acts in the same way, these remedies are inapplicable : the rights of its members depends upon their contract of membership, and are to be protected by declaration and injunction, which accordingly are the remedies employed in such cases.

(Emphasis supplied)

The failure of the election officer of a particular region of a trade union like the Guild to hold timely elections is something concerning its internal management beyond the purview of the writ jurisdiction. The writ petition alleging irregularity in the conduct of election to the Managing Committee of the Guild is wholly misconceived and not liable to be entertained therefore.

5. What then is the remedy of the petitioner who has a legitimate grievance in that there will be none to represent the Kerala region if the election to the Managing Committee of the Guild is allowed to proceed ? Nothing prevents the petitioner from moving the Registrar of Trade Unions and seeking appropriate directions for conducting election in the various regions stated supra. Every application u/s 5 of the Act for registration of a trade union shall be made to the Registrar who is entitled to grant registration or cancel the same later. The constitution and the rules of a trade union should provide for the manner in which the office bearers have to be appointed and removed u/s 6 thereof. The Supreme Court in *North Eastern Railway Employees Union and Others Vs. IIIrd Additional District Judge, Farukhabad and Others*, held as follows:-

The Registrar of trade unions is the authority charged with the duty of administering the provisions of the Trade Unions Act. The High Court was obviously in error in designating the General Manager, North Eastern Railway as the authority to hold elections of the trade union. We accordingly grant special leave, modify the direction made by the High Court and direct instead that the elections will be held under the supervision of the Registrar of trade unions or by an officer designated by him for that purpose.

(Emphasis supplied)

The decision afore-quoted was followed in *B.C. Sharma and Another Vs. M.L. Bhalla and Others*, wherein it was held that the officers designated by the Registrar of trade unions can supervise the election. It was held therein as follows:-

The elections of those branches which have not yet been completed should also be completed immediately. Any dispute or difference in regard to the list of voters would also be determined by the Registrar of trade union.

The proper remedy of the petitioner is to bring to the notice of the Registrar of trade unions about the necessity to hold elections in the Kerala region before conducting election to the Managing Committee of the Guild. The petitioner can also move the Civil Court for declaration and injunction based on the contract of

membership in the Guild and establish that the election to its Managing Committee should await the outcome in the Kerala region. It is however inequitable to halt the election process concerning a large section of members across India on the eve of election on account of an internal squabble in one region. It is submitted that election at Kozhikode and Kochi have already been conducted and that the election at Thiruvananthapuram in the Kerala region of the Guild would be held within a period of one month. The petitioner seeks a breathing time to move the Registrar of trade unions to expedite the election process in the Kerala region and to defer the election to the Managing Committee. The status quo as on today shall continue for a period of two weeks to enable the petitioner to move the Registrar of trade unions or other appropriate forum. Nothing said in this judgment will disable the election officers to expedite the election process in the Kerala region of the Guild in the meanwhile to give no room for complaint.

The Writ Petition is disposed of. No costs.