
(1997) 09 PAT CK 0067

In the Patna High Court

Case No : Letters Patent Appeal No. 281 of 1997 (R)

Mosabani Mines Labour Union

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-09-1997

Acts Referred:

Trade Unions Act, 1926 — Section 28, 8

Citation : (1997) 2 PLJR 807

Hon'ble Judges : S.K. Chattopadhyaya, J; M.Y. Eqbal, J

Bench : Division Bench

Advocate : A.K. Sinha and D.K. Chakraverty, for the Appellant; K.N. Choubey, V.P. Singh and A.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This appeal under Clause 10 of the Letters Patent of the Patna High Court is directed against the judgment and order dated 16.5.1997 passed by a learned Single Judge of this Court in CWJC No. 675 of 1997(R) whereby and where under the learned Single Judge dismissed the writ petition and refused to grant any relief to the Petitioner-Appellant.

2. The aforesaid writ petition was filed by the Petitioner-Appellant challenging the authority of Respondent No. 2 in passing the order dated 24.2.1997 whereby Respondent No. 2 (Labour Commissioner-cum-Registrar of the Trade Union, Bihar, Patna) recommended the names of the office bearers of the rival faction of the Mosabani Mines Labour Union to the management for recognition.

The aforesaid order was challenged by the Petitioner on the ground, inter alia, that the Mosabani Mines Labour Union is a trade union, registered under the Trade Unions Act representing the workers of the Hindustan Copper Limited and has its own constitution and rules for proper functioning of the Union and affiliated body of the Indian Trade Union Congress. The elections for the office bearers of the Union were regularly held as per the terms laid down in the

constitution of the Union and prior to the present dispute in between the Petitioner which is the recognised Union by the management, and the rival faction of the Union the election was held on 21.1.1991 for the period 1991-92. The period of the committee was extended from time to time since the wage settlement in the Copper Industries was in progress and the period of the committee was valid till 31.12.1995. The election was conducted between 7th to 15th February, 1996 at Mosabani in presence of the officers of the local administration, representatives of the Press and thousands of workmen and on 14th February, 1996, the executive committee members were duly elected. The Petitioner's case was that Sri Ashok Mishra was unanimously elected as President by the executive committee members. However, Respondent No. 6 also called a meeting illegally contrary to the bye-laws in which signature of some persons who were not even members of the Union were taken and Respondent No. 6 declared himself elected as President of the Union. The rival faction of the Union preferred a writ petition before the Calcutta High Court in which prayer was made to recognise the newly elected body of the Union and for prohibiting the concerned Respondents from recognising the Petitioner-Union in respect of the administration or taking policy decision on behalf of the Union. In that writ petition, affidavits and counter affidavits were filed by the parties and the said writ petition is pending for hearing.

A similar writ petition was also filed before this Court being C.W.J.C No. 314 of 1997(R) for a direction to Respondent No. 2 to recall the list of the office bearers of Mosabani Mines Labour Union elected to the general body meeting held on 10.9.1995. On 4.2.1997 an order was passed in that writ petition for issuance of notice to the Management namely, Hindustan Copper Ltd.

3. The Appellant's case is that the Registrar, Trade Union, illegally issued an order dated 24.2.1997 giving direction to the management to recognise the Union represented by the Respondent No. 6.

4. In the counter affidavit filed by Respondents 1 to 4 the stand taken by the Respondents was that the impugned order dated 24.2.1997 issued by the Respondent concerned was fully justified, inasmuch as the newly elected General Secretary in his letter dated 6.11.1995 addressed to Respondent No. 2 sought intervention and enquiry under the provision of the Traded Union Act and also under the Code of Discipline in industry and accordingly enquiry was duly made. After enquiry Respondent No. 2 issued the order which was perfectly within his jurisdiction. According to the Respondents, the Government of Bihar with a view to implement the Code of discipline in the industries constituted a Committee in which the Secretary, Department of Labour, Employment and Training and the Registrar of the Trade Unions, Bihar, Patna, are the Chairman and Secretary respectively and the said committee is authorised to deal with the inter-Union disputes in terms of the agreement which was accepted by all the Central Trade Union Organisations, including the Petitioner-Mosabani Mines Labour Union.

In a separate counter affidavit filed by Respondent No. 6 it was stated, inter alia,

that the Code of discipline in industries, which is the result of the Tripartite Agreement between the Labour Unions, Management, the Government and its officers is for the purpose of maintaining discipline, harmony and peace in the industries.

5. The learned Single Judge after hearing both the parties dismissed the writ petition holding that Respondent No. 2, the Labour Commissioner-cum-Registrar of the Trade Unions had jurisdiction to decide the dispute regarding recognition of the office bearers of the Union and it had also jurisdiction to recognise the office bearers of the Union.

6. Mr. A.K. Sinha, learned Senior Counsel appearing on behalf of the Appellant, assailed the impugned judgment passed by the learned Single Judge as being contrary to law, facts and evidence on record and also against the settled principle of law laid down by the Apex Court and various High Courts. Learned Counsel submitted that the impugned order whereby the Registrar, Trade Union gave direction to the management to recognise the Union represented by Respondent No. 6 is wholly without jurisdiction and without any authority of law. It was further submitted that the learned Single Judge has completely lost sight of the fact that the rival faction of the Union preferred a writ application in Calcutta High Court, being CO No. 9358 (W) of 1996, in which prayer was made to recognise the newly elected body of the Union and for prohibiting the concerned Respondent from recognising the Petitioner-Union in respect of administration or policy decision on behalf of the Union. In the said writ petition, the Respondent Management filed reply stating, inter alia, that the Appellant-Union is the only recognised Union and the said writ petition is still pending. Learned Counsel then submitted that the learned Single Judge has not correctly appreciated the law settled in this respect in a recent decision of a Division Bench of this Court in the case of Bokaro Steel Workers Union and Anr. v. The State of Bihar and Ors. (1995 (1) PLJR 400). Learned Counsel submitted that the learned Single Judge proceeded on the basis that the Resolution has got no statutory force, even then it has been held that the Labour Commissioner-cum- Registrar has authority to recognise the office-bearers of a particular Union.

7. On the other hand, Mr. K.N. Choubey, learned Senior Counsel appearing for the Respondent-rival Union firstly submitted that the impugned order is perfectly legal and valid, inasmuch as the Registrar, Trade Union has all the power u/s 28 of the Trade Union Act to enquire into the matter with regard to the dispute between the two rival Unions inter-se about the recognition of the elected office-bearers of the Union. Learned Counsel then submitted that after the impugned order was passed by the Registrar, Trade Union, the Appellant filed a representation before the Labour Commissioner and thereby submitted to the jurisdiction of the Labour Court. The Appellant, therefore, cannot challenge the order of the Labour Court on the ground that it had no power to enquire into the dispute. Learned Counsel then submitted that in view of the law laid down in the case of Mukund Ram Tanti Vs. S.I. Raza, Registrar, Trade Unions and Others, ,

the impugned judgment of the learned Single-Judge is perfectly in accordance with law.

8. Having regard to the facts of the case and the submissions made by the learned Counsel for the parties, the only question which falls for consideration is:

Whether the Labour Commissioner-cum-Registrar of Trade Unions was within its authority to issue the impugned order directing the management of M/s. Hindustan Copper Complex to recognise the office bearers of the rival faction of the Union.

The question has been thoroughly considered by the Division Bench of this Court in the case of Bokaro Steel Workers Union (supra) and their Lordships, after relying upon and referring the decisions of this Court in the cases of Mukund Ram (supra), North Eastern Railway Mazdoor Union v. Registrar of Trade Unions (1969 LIC 209) and Indian Explosives Workers Union and Anr. v. State of Bihar (1989 (2) BLJR 315) have come to the following conclusion:

(i) In a dispute between two rival factions claiming to be the office bearers of a union, it is open to the Registrar to hold an enquiry for the purpose of maintaining and up-dating the register as required to be maintained u/s 8 of the Act.

(ii) His decision in this regard shall neither confer any right on any person or group of persons nor divest any person or group of persons of any lawful rights.

(iii) Consequently the Registrar has no authority or power to issue any direction asking/advising the Labour Department of the Government or the employer to recognise and treat any particular person or group of persons as the duly elected office bearers of the union in dealing with that union.

(iv) The Registrar, Trade Unions has no authority or power to direct the holding of election of the office bearers of union under his own supervision or under the supervision of his nominee.

(v) In the absence of any provision in the Trade Unions Act, any dispute this kind, can only be resolved means of a suit filed before a(sic) Court.

(vi) The adjudication in a suit least in this State is normally a(sic) and time consuming process and (sic) not constitute a wholly satisfaction remedy for resolving the dispute.

(vii) The legislature will, therefore be well advised to address itself to the lacuna in the Trade Unions Act and to take steps to remedy it which has been long overdue.

9. Now coming to the impugned judgment of the learned Single Judge, it appears that the learned Single Judge mainly considered the Resolution dated 11.3.1989 and held that in terms of the said Resolution the Labour Commissioner has been empowered to decide the dispute about the representative character of the Union

for the purpose of recognising the office bearers of a particular Union. The Learned Single Judge has relied upon the decision of the Apex Court in the case of General Secretary, Rourkela Sramik Sangh Vs. Rourkela Mazdoor Sabha and others, . In that case the Apex Court considered the Code of discipline in industry and held that the Labour Court has jurisdiction to consider the question of recognising the Labour Union. The learned Single Judge further held that although the said Code of discipline has no statutory force, yet it is a voluntary agreement between the parties, which confers jurisdiction to the authority to decide such dispute.

10. From perusal of the counter affidavit filed by Respondents 1 to 4, which sworn by the Deputy Commissioner Labour, Jamshedpur, it appears that it was stated that there is Code of discipline in the industry which is based on tripartite agreement consisting of Labour Union, Registrar and Government authorities for the purpose of maintaining discipline and industrial peace in industries. In this regard, Government of Bihar constituted a Committee of which Secretary of the Department, Labour, Employment and Training, Bihar, and the Registrar of the Trade Unions, Bihar, Patna, are the Chairman and the Secretary. The said Committee is authorised to deal with, inter alia, the Union disputes. The said agreement was accepted and agreed by all the Central, Trade Union Organisations, including the Mosabani Mines, Labour Union. In view of this position, it is evident that it is the two men Committee, referred above, who have been authorised to decide the disputes between the members of the Union inter-se. Admittedly, the impugned order was issued by the Registrar, Trade Unions and not by the Committee and in that view of the matter, in my opinion, the impugned order cannot be said to have been passed in accordance with the provisions of the Resolution, even assuming the same is statutory in nature.

11. In the case of General Secretary, Rourkella Sramik Sangh (supra) the question fell for consideration before the Apex Court was whether the implementation machinery constituted under the Code of discipline have authority to decide the issue with regard to recognition of a particular Union.

Under the Code of discipline in the industries, committees were constituted in consultation with the Central Employers and Workers Organisation. Labour Commissioner was named as the implementation officer who had the option either to carry out the verification of the membership by himself or to entrust the same to some other officer, like the Deputy Labour Commissioner. In the facts and circumstances of that case, the Apex Court held that the Labour Court had the authority or the jurisdiction to consider the question of recognition of the Labour Union. In the instant case, admittedly under the Code of discipline it was two men committee comprising of the Secretary to the Government of Bihar, Department of Labour, Employment and Training and the Registrar of the Trade Unions, Bihar, is competent to take decision in the matter of recognition of the office bearers of the Union and not the Labour Commissioner-cum-Registrar of the Trade Union, as has been done in this case. As noticed above, it has been

admitted by the Respondents 1 to 4 that it is the Committee which is competent to take a decision in this matter. Since the decision has not been taken by the Committee, I am of the opinion that the impugned order cannot be sustained in law. The learned Single Judge was, therefore, not correct in law in holding that the impugned order recognising the members of the rival faction of the Union is in accordance with law.

12. For the reasons aforesaid, this appeal is allowed and the impugned judgment passed by the learned Single Judge is hereby set aside. However, there shall be no order as to costs.

S.K. Chattopadhyaya, J.

13. I agree.