
(2016) 02 GAU CK 0071
In the Gauhati High Court
Case No : C.R.P. No. 32 of 2016.

Mukul Das

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

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

Citation : (2016) 161 AIC 783 : (2016) 4 Civil LJ 168 : (2016) 4 Gau LJ 229 :
(2016) 4 Gau LR 210 : (2016) 5 NEJ 413

Hon'ble Judges : N. Chaudhury, J.

Bench : Single Bench

Advocate : G.N. Sahewalla, Sr. Advocate and Divya Swami Advocate, for the Appellant; G. Uzir and P. Bora, Advocates, for the Respondent

Final Decision : Allowed

Judgement

N. Chaudhury, J. (Oral) - In this application under Article 227 of the Constitution of India, the plaintiff of Title Suit No. 406/2014 of the Court of learned Munsiff No. 1, Kamrup at Guwahati has challenged the appellate judgment and order dated 10.12.2015 passed in Misc. Appeal No. 17/2015 of the court of learned Additional District Judge No. 1, Kamrup (M) at Guwahati whereby the learned first appellate court set aside the prohibitory injunction granted by the learned trial court on 30.03.2015 in Misc. (J) Case No. 460/2014 arising out of the aforesaid title suit.

2. Present petitioner, as plaintiff, instituted Title Suit No. 406/2014 challenging the election of the defendants No. 5 and 6 as the President and the Secretary to the Zonal Executive Committee of NF Railway All India SC and ST Railways Employees' Association, Maligaon. According to the plaintiff, the election was scheduled to be held on 18.10.2014 but the Adhoc Zonal Committee postponed the election at the last minute and thereafter issued a notification on 17.10.2014 for holding the election on 01.11.2014. The Adhoc Committee also made changes in the Electoral Roll at the last minute and the subsequent election notification

dated 17.10.2014 is contrary to the provisions of the bylaws holding the field. According to the plaintiff, the election held on 01.11.2014 leading to election of the defendants No. 5 and 6 was illegal and were liable to be so adjudged by a decree of declaration and also for permanent injunction restraining the defendants No. 1 and 2 from circulating and giving effect to the newly elected body by election notification dated 01.11.2014. A mandatory injunction was also prayed for in the suit directing the defendants No. 3 and 4 to appoint a new Adhoc Zonal Executive Committee for conducting election to constitute the election. In the aforesaid suit, an application was also filed under Order 39, Rule 1 and 2 read with section 151 of the Code of Civil Procedure praying for ad-interim injunction for restraining the opposite parties No. 1 and 2 from circulating and giving effect to the newly elected Zonal Executive Committee (ZEC) out of the election held on 01.11.2014 and for restraining the opposite parties No. 5 and 6 from discharging any duties as the President and the Secretary respectively of the newly elected body. A prayer for mandatory injunction has also been prayed directing the opposite parties No. 5 and 6 to appoint a new Adhoc ZEC for conducting election to constitute regular ZEC of All India Schedule Caste and Schedule Tribes Railway Employees" Association, NF Railway Zone till disposal of the suit.

3. On being summoned, the opposite parties No. 5 and 6 appeared and submitted objection. Railway authorities also submitted objection against the injunction prayer. After hearing the learned counsel for the parties and upon consideration of the pleadings based on affidavit, the learned trial court by his judgment and order dated 30.03.2015 granted temporary injunction restraining the defendants No. 5 and 6 from discharging their duties as the President and the Secretary of the newly formed ZEC till the suit is finally disposed of on merit. However, from perusal of the aforesaid order it does not appear as to whether the learned trial court was satisfied as to existence of prima facie case, balance of convenience and irreparable loss and injury. Be that as it may, the defendants No. 5 and 6 challenged the aforesaid order of temporary injunction before the learned first appellate court vide Misc. Appeal No. 17/2015 and the learned first appellate court by the impugned judgment and order dated 10.12.2015 set aside the order of injunction passed by learned trial court in Misc.(J) Case No. 460/2014. This first appellate judgment and order dated 10.12.2015 has been called in question in the present revision petition.

4. This court while issuing notice of motion, made an observation that immediately after service of notice an endeavour shall be made for disposal of the revision petition. Accordingly, after the parties have appeared, a prayer has been made by both sides for hearing the matter out of turn and to pass an appropriate order. Accordingly the matter has been taken up for disposal today.

5. I have heard Mr. GN Sahewalla, learned senior counsel assisted by Ms. Divya Swami, learned counsel for the petitioner and Mr. G Uzir, learned counsel appearing for the respondents No. 5 and 6. I have also heard Ms. P Bora, learned

counsel appearing on behalf of respondents No. 1 and 2. I have gone through the pleadings of the parties as well as the two judgments and orders passed by the learned courts below.

6. The dispute between the parties, in this case, is in regard to validity of an election to Zonal Executive Committee (ZEC) of All India Schedule Caste and Schedule Tribes NF Railway Employees' Union at Maligaon. Admittedly, the Adhoc Zonal Executive Committee initially fixed 18.10.2014 as the date for holding regular election but on the last day the election was postponed and a fresh notice was issued on 17.10.2014 re-fixing the election on 01.11.2014. While it is the case of the plaintiff that such postponement of election and re-fixing on 01.11.2014 is contrary to the provisions of the bylaws holding the field, the defendants No. 5 and 6 strenuously assert that the election was duly held in accordance with the provisions holding the field. The learned trial court relied on the respective affidavits filed by the parties. From perusal of the judgment of the learned trial court it appears that learned trial court was more engaged on the merit of the suit than deciding the injunction matter in the line of well established criteria, namely, presence of prima facie case, balance of convenience and irreparable loss and injury. Be that as it may, after hearing the parties and considering the matters in entirety, the learned trial court was of the view that the plaintiff is entitled to injunction and accordingly an order of prohibitory injunction was passed. When the matter came up before the first appellate court, the learned first appellate court being the last court on fact and law became duty bound to consider the matter in entirety in accordance with the established principles of law. The appellate court in an injunction matter is also equally duty bound to consider the dispute within the narrow compass of Order 39, Rule 1 and 2 of the Code of Civil Procedure as well as the established principles of law as to existence of prima facie case, balance of convenience and irreparable loss and injury. In appropriate case, the element of public interest is also a matter to be considered. In a catena of judgments, the powers of appellate court in injunction matter have been laid down. To quote a few of them, the following judgments may be referred to as a matter of illustration.

1. (2011) 6 SCC 73, Purshottam Vishandas Raheja and anr. v. Shrichand Vishandas Raheja (D) through L.Rs. and ors.

2. 1997(1) GLT 282, Yumnam Yaima Singh and ors. v. Angom Jugin Singh and ors.

3. AIR 1981 SC 1786, Shah Babulal Khimji v. Jayaben D. Kania and Anr.

7. In an injunction matter, the court is not required to go into the merit of the case. It is not the prima facie title of the parties which determines as to how a question of injunction is to be decided. It is not a question of prima facie title but a question of prima facie case. What is prima facie case has been considered by the Hon'ble Supreme Court in the case of Dalpat Kumar and another v. Prahlad Singh and others (AIR 1993 SC 276). When a prayer for injunction can be

allowed and when it can be rejected had also been dealt with in the case of Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd. reported in (1999) 7 SCC 1. In the present case, the first appellate court being the last court of law and fact ought to have decided the appeal keeping in view as to whether the plaintiff has a strong prima facie case for getting injunction, as to whether balance of convenience lies in favour of the plaintiff and as to whether irreparable loss and injury would be occasioned if the injunction is not granted. From perusal of the first appellate court it does not appear that the learned first appellate court proceeded on such established principles. The learned first appellate court even before holding that plaintiff is not entitled to injunction, is required to hold that plaintiff does not have a prima facie case for getting injunction. If there is strong prima facie case, in that event, other two elements, namely, balance of convenience and irreparable loss and injury were also required to be considered. But a perusal of the impugned appellate judgment does not show that the same came up for consideration before the learned first appellate court. Considering the first appellate judgment in the aforesaid light, it cannot be upheld and accordingly the revision petition stands allowed. The learned first appellate judgment and order is hereby set aside. The learned first appellate court shall decide the appeal afresh in view of the law laid down by the Hon''ble Supreme Court and by following the established principles as indicated above. The same shall be done within a period of 1 (one) month from today. The parties shall appear before the learned Additional District Judge No. 1 on 22.02.2016.

8. At this stage, Mr. G. Uzir, learned counsel for opposite parties No. 5 and 6, submits that the elected body has been functioning as on today in view of the first appellate judgment and order and so, status quo as on today be directed to be maintained by the parties till the first appellate court passes an order afresh. Having heard the learned counsel for the parties, it is accordingly ordered that the arrangement as in existence as on today shall continue to be in force till the learned first appellate court decides the appeal.