
(2016) 02 RAJ CK 0158
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5628 of 2014

Naresh Kumar

APPELLANT

Vs

Ajay

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Citation : (2016) 4 RLW 3474 : (2016) 3 WLC 242 : (2016) 3 WLN 302

Hon'ble Judges : Mr. Mohammad Rafiq, J.

Bench : Single Bench

Advocate : Shri Yogesh Kumar Sharma, Advocate, for the Appellant; Shri Ashvin Garg, Shri Anil Yadav and Shri M.S. Choudhary, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Mr. Mohammad Rafiq, J.—This writ petition has been filed by the petitioners against the order dated 13.03.2014 passed by Additional District and Sessions Judge No.1, Behror, Alwar by which appeal of the petitioners against the order dated 24.07.2013 passed by Civil Judge (JD) Behror, District Alwar has been dismissed. The Civil Judge by the aforesaid order dated 24.07.2013 allowed the application under Order 39, Rule 1 & 2 CPC for temporary injunction filed by the plaintiff-respondents nos.1 to 4 in the civil suit filed by them.

2. Grievance of the petitioners is that a suit for permanent injunction along with an application for temporary injunction was preferred by the respondent nos.1 to 4 to the effect that the petitioners and other workers have allegedly in forged manner formed a trade union and intended to get it registered before the Registrar. The learned trial court without going into the question of maintainability of the suit by virtue of bar contained in Section 18 of the Trade Unions Act, 1926 allowed the application for temporary injunction of the respondent nos.1 to 4 and restrained them to persuade the trade union activities in flagrant violation of Article 19(1)(g) of the Constitution of India and also restrained the Registrar, Trade Unions to register the trade union of the petitioners and other workers. Petitioners aggrieved by the aforesaid order dated

24.07.2013 preferred an appeal before the appellate court. The appellate court by impugned order dated 13.03.2014 dismissed the appeal without going into the factual aspects, preliminary objections and the statutory provisions enshrined in Constitution of India and Trade Unions Act, 1926.

3. Shri Yogesh Kumar Sharma, learned counsel for the petitioners has argued that sub-section (1) of Section 4 of the Trade Unions Act, 1926 provides that 10% of the members/workmen of any factory can form the trade union and the Trade Unions Act, 1926 does not provide for any remedy to the plaintiffs to object for registration of fresh trade union. It is contended that 131 members of the petitioners' trade union attended the meeting and passed the resolution for formation of trade union and this strength is more than 20% of the total workmen presently working in the factory of respondent no.6. Thus petitioners cannot be restrained to form the trade union as per Rules.

4. Learned counsel submitted that the defendant respondents have failed to produce the copy of the Rules of constitution of Trade Union, their application for temporary injunction is therefore defective and faulty. Learned counsel further argued that formation of a Trade Union is a fundamental right under Article 19(1) (c), which cannot be violated by any court, particularly the civil court, which has not even jurisdiction to entertain the suit as well as application for temporary injunction.

5. It is contended that no civil suit can be entertained by the civil courts with respect of the dispute arising between the different trade unions and despite preliminary objection raised by the petitioners in the reply to the application itself, thus entertaining such an application for temporary injunction by the trial court is not justified.

6. Learned counsel for the petitioners further submits that if any dispute arises between management and workers, workers and workers and employee and employers then the same shall be considered as "industrial dispute" under Section 2 of the Industrial Disputes Act, 1947 and therefore the civil suit was not within the ambit of jurisdiction of the learned trial court.

7. It is further contended that the management respondents on 17.10.2012 illegally retrenched the services of all the workers, who became member of the trade union and thereafter even in the conciliation proceedings, the management agreed to take back only 173 workers on the roll and rest of the 250 workers were not taken back in service. This very fact established the analogy that respondent nos.1 to 4 and the management were having connivance with the petitioners. It is therefore prayed that the impugned orders thus deserve to be quashed and set aside.

8. Shri Ashvin Garg, learned counsel for the plaintiffs-respondents opposed the writ petition and submitted that the learned courts below were fully justified in passing the injunction order in favour of plaintiffs restraining the registration of trade union at the instance of petitioners. Learned counsel submitted that

defendants-petitioners earlier filed application under Order 7, Rule 11 CPC contending that the suit was barred by law in view of provisions contained in Trade Unions Act, 1926. That application was dismissed by the learned trial court vide order dated 13.2.2013. Petitioners then filed a revision petition bearing S.B. Civil Revision Petition No.23/2013 before this Court, which was also dismissed by order dated 29.3.2013. The learned trial court as also the appellate court were fully justified in granting injunction as they correctly found prima facie case in favour of the plaintiff-respondents. The learned trial court has found that the defendant-petitioners did not pass any resolution for forming the trade union. The signatures of 131 labourers merely proved that they convened a meeting on 29.9.2012. Mere filing of affidavits of 50 workmen would not be read as sufficient proof of the fact that any resolution was signed in the meeting to form trade union. Such affidavits merely proved that a general meeting was convened on 29.9.2012 and, therefore, another meeting was convened on 7.10.2012 from 90 workmen alleging signing the proceedings and stating that a sum of Rs.1,00,000 from each of the workman was collected, but this money was never put to use for constitution of new trade union, rather it was being used for distribution of liquor among workmen and for organising the parties.

9. Learned counsel for the plaintiffs-respondents argued that formation of new union was back out by the factory owners and, therefore, it would be a dummy union and would be apposed to the interest of the workmen. Learned counsel argued that the civil court would definitely have the jurisdiction for such a dispute. In support of his arguments, he has relief on the judgement of this Court in Satya Narain Sharma & Ors. v. Rastriya Mill Mazdoor Sangh & Ors.-1993 WLN (UC) 1 and that of Madras High Court in Puducherry Shasun Chemicals & Drugs Niruvana Thozhilalargal Muneerta Sangam & Anr. v. Labour Officer & Ors.-2010 (125) FLR 39.

10. Having heard the learned counsel for the parties and perused the material on record, I have given my thoughtful consideration to the matter.

11. Common case of the parties is that total number of workmen in the factory are 650, therefore, if on first meeting 131 and second meeting 90 workmen had signed the resolution for the formation of new Trade Union, the trial court would not be justified in restraining the registration of the trade union in proceeding to examine the application of the workmen. If at all the plaintiffs have any grievance, they could raise their objection before the Registrar.

12. Section 4 of the Trade Unions Act, 1926 has provided for mode of registration. Sub-section (2) thereof provides that where an application has been made under sub-section (1) for the registration of a Trade Union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the Trade Union or have given notice in writing to the Registrar disassociating

themselves from the application. It would mean that even if half of the original signatories have back out or have ceased to be members of the trade union, will the Registrar can proceed to register new trade union. Section 5 of the Act provides that every application for registration of a Trade Union shall be made to the Registrar and shall be accompanied by a copy of the rules of the Trade Union and a statement of following particulars, namely; ;(a) the names, occupations and address of the members making application, (b) the name of the Trade Union and the address of its head office; and (c) the titles, names, ages, addresses and occupations of the office bearers of the Trade Union.

13. Section 6 of the Act provides the provisions to be contained in the Rules of a Trade Union namely; the name of the Trade Union; the whole of the objects for which the Trade Union has been established; the whole of the purposes for which the general funds of the Trade Union shall be applicable; the maintenance of a list of the members of the Trade Union; the admission of ordinary members; the payment of a subscription by members of the Trade Union; the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members; the manner in which the rules shall be amended, varied or rescinded; the manner in which the members of the executive and the other office bearers of the Trade Union shall be appointed and removed; the safe custody of the funds of the Trade Union, an annual audit and the manner in which the Trade Union may be dissolved. The Registrar is empowered under Section 7 of the Act to call for further particulars and required alteration of the name under which the trade union was proposed to be registered. Section 8 provides that Registrar on being satisfied that the Trade Union has complied with all the requirements of the Act, shall register the Trade Union by entering in a register to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration. Section 9 provides for certificate of registration. Section 10 provides for cancellation of registration. Section 11 provides for the remedy of appeal by any person aggrieved by any refusal of Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration.

14. In the circumstances, therefore, all what has being alleged by the plaintiff-respondents herein is premature because full fledged mechanism has been engrafted into the Trade Unions Act, 1926. The Court cannot proceed on pre-supposition that the Registrar would allow registration of trade union without ensuring compliance of the statutory requirement envisaged in the Act. The trial court has therefore erred in law in recording finding of prima facie case in favour of the plaintiffs. The appellate court mechanically concurred with the view of the trial court without giving any reason of its own.

15. Merely because the application filed by the defendants-petitioners under Order 7, Rule 11 CPC has been rejected, does not mean that this would constitute a prima facie case in favour of plaintiff-respondents. The dismissal of

the suit on the ground that it does not give rise to any cause of action or it is barred by law is one thing, but granting an order of injunction on recording of satisfaction of three requirements of law namely; prima facie case, irreparable loss/injury and balance of convenience, is based entirely on different considerations. They have to be considered separately and one cannot be confused with another.

16. In the result, the impugned orders dated 13.03.2014 and 24.07.2013 are liable to be set aside and are accordingly set aside and temporary injunction application is dismissed.

17. Accordingly, the writ petition is allowed.