

(2002) 10 AHC CK 0170

In the Allahabad High Court

Case No : C.M. Recall Application No. Nil of 2001 in C.M.W.P. No's. 37935 of 1999, 39766 of 2001 and 26300 of 2002

North Eastern Railway Employees" Union and Others

APPELLANT

Vs

Deputy Labour Commissioner/Deputy Registrar of Trade Unions and Others

RESPONDENT

Date of Decision : 11-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Trade Unions Act, 1926 — Section 27

Citation : (2003) 1 AWC 104 : (2003) 96 FLR 296 : (2003) 2 LLJ 201

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : R.N. Singh, Anu Jaiswal, G.K. Singh, A.P. Shahi and Arun Kumar, for the Appellant; T.P. Singh, Krishna Murari and Anil Bhushan and S.C., for the Respondent

Final Decision : Disposed Of

Judgement

Anjani Kumar, J.—All the three writ petitions since based on the common facts and raises common question of law, therefore, they are heard and disposed of by this common judgment with the consent of the parties.

2. The first writ petition, i.e., Civil Misc. Writ Petition No. 37935 of 1999 came up for hearing before me on 15th October, 2001 and the said petition was dismissed by me as having become infructuous in view of the fact that the petitioners had made the following prayers :

(i) issue a writ, order or direction in the nature of certiorari calling for the record of the case and quashing the order dated 19.8.1999 (Annexure-18) passed by the Deputy Labour Commissioner/Deputy Registrar, Trade Unions, Gorakhpur ;

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to recognise and register and not to interfere in the working of

Central Working Committee of North Eastern Railway Employees Union (P.R.K.S.) Gorakhpur, elected on 29.6.1999 in an election meeting and returned by Hon"ble S. R. Mishra (Ex. Judge of Allahabad and Calcutta High Courts) acting as Returning Officer in terms of the directions issued by this Hon"ble Court in the judgment of Hon"ble O. P. Garg, J., in Writ Petition Nos. 1629 of 1999 and 1632 of 1999 vide orders dated 1.2.1999 and 19.2.1999 ;

(tii) Issue any other or further orders as this Hon"ble Court may deem fit and proper in the circumstances of the case ;

(iv) Award the cost of the petition to the petitioners."

3. The order dated 19.8.1999 (Annexure-18 to the writ petition), which was subject-matter of challenge in Writ Petition No. 37935 of 1999. was an order passed by the Deputy Registrar of the Trade Unions, Gorakhpur, in exercise of power u/s 27 and other analogous provisions of the Trade Unions Act on Form "J" submitted to the Registrar for the purpose of maintaining register of office-bearers of the recognised registered Trade Unions.

4. From the perusal of Form "J", which was subject-matter of Writ Petition No. 37935 of 1999, it is clear that the elections, which were communicated to the Registrar for the purpose of maintaining register in Form "J", were held for one year. Admittedly on 15th October. 2001, when the aforesaid order was passed, one year period was over and since the term for which the elections were held had expired, this petition was dismissed as having become infructuous by efflux of time.

5. An application was filed for recall of the said order dated 15th October, 2001, which came up for hearing before me and after hearing the learned senior counsel appearing for the parties, the following order was passed by me on 30th October, 2001 :

"This application for recall of the order dated 15th October, 2001, has been argued by Sri R. N. Singh, learned senior counsel for the petitioner and opposed by Sri T. P. Singh, learned senior counsel for the other side.

Parties are in agreement that before disposal of this application, as stated in paragraph No. 12 of the affidavit filed in support of this application, since fresh elections were already held in the month of December, 2000 and in 2001, which are subject to the approval by the Labour Commissioner in Form "J". However, it has not been disputed that the elections in the months of May to July, 2001, have already been held for the term of two years, Sri T. P. Singh, learned counsel has referred to the notice from his client that tomorrow is the date fixed before the Labour Commissioner with regard to election of December, 2000.

In these circumstances, without entertaining into the merits or otherwise in this application, I direct the Labour Commissioner to decide Form "J", within a period of fifteen days from today. It will be open to the parties to file such application as they choose.

List this application in the week commencing on 19th November, 2001."

6. The above order was passed by me because it has been stated in the said application for recall of the order dated 15th October, 2001, that the order dated 15th October, 2001, was passed on the application filed by Sri R. S. Awasthi which was for dismissal of the said writ petition. It has been stated in the affidavit filed in support of the aforesaid application for recall that said Sri Awasthi has already been expelled for a period of six years in the meeting of the Central General Body requisition dated 30th January, 1994 on account of his anti-union action and in his place, one Sri R. C. Mishra was elected as General Secretary. It was admitted between the parties that since fresh elections were already held in the month of December, 2000 and again in the year 2001 and these two elections are pending approval before the Labour Commissioner in Form "J" and it is also not disputed that the elections held in the month of May, 2001 have already been held for the term of two years and the Registrar has already fixed for appearance of both the rival faction to appear before him before he registers the change in the officebearers of the Union under the provisions of the Trade Unions Act.

7. It is in these circumstances, this Court, without entering into the merits or otherwise, in the application for recall of the order dated 15th October, 2001, directed the Labour Commissioner to decide Form "J" within a period of fifteen days from the date of passing of the order, i.e., 30th October, 2001. It was made clear in the said order dated 30th October, 2001 that it will be open to the parties to file such application as they choose and the application for recall of the order dated 15th October, 2001 was directed to come up on 19th November, 2001.

8. Pursuant to the directions issued by this Court, as stated above, the Registrar passed the impugned order on 15th November, 2001 wherein he found that none of the claims set up by the rival parties was worth registering and it is only election dated 2nd May, 2001 in which Sri M. P. Sharma was elected as President and Sri Ram Chandra Singh was elected as General Secretary who were later on registered by the Registrar, Trade Unions. The order that was subject matter of challenge in Writ Petition No. 39766 of 2001 is not amenable to the writ jurisdiction of this Court in view of the reasons given hereinafter and also for the fact that pursuant to the Government order which has been challenged by the petitioner in Writ Petition No. 26300 of 2002, an appeal lies to the District Judge. For this reason also, the application to recall the order dated 15th October, 2001, deserves to be dismissed and is hereby dismissed and the order dated 15th October, 2001, dismissing the writ petition as having become infructuous is upheld. In the meantime, as stated above, pursuant to the direction issued by this Court, the Registrar has decided the controversy by his order dated 15th November, 2001 which is now subject-matter of Civil Misc. Writ Petition No. 26300 of 2002.

9. A perusal of the order passed by the Deputy Registrar, Trade Unions before whom the controversy was pending, demonstrates that it has registered Form "J"

dated 1.1.1995, in which Sri Jagdambika Pal was elected as President and Sri R. S. Awasthi as General Secretary. The matter was taken up to the State Government and the State Government by its order dated 1st April, 2002, have directed that all rights of the Registrar to register Form "J" under the Trade Unions Act have been delegated to the Additional/Deputy Registrar with a further provisions that any person aggrieved by the order of the Registrar or Additional/Deputy Registrar may prefer an appeal to the District Judge, having jurisdiction in the present case the District Judge, Kanpur, and in view of the aforesaid direction, since there is already a provision of appeal no interference is required in the order of the Deputy Registrar, Trade Unions, Gorakhpur and Writ Petition No. 26300 of 2002 deserves to be dismissed.

10. In this view of the matter, the Writ Petition No. 37935 of 1999, which has been dismissed by me as having become infructuous by the order dated 15th October, 2001, does not require any interference and the application for recall of the said order dated 15th October, 2001, deserves to be dismissed for the reasons already stated in the order dated 15th October, 2001 and also in view of the subsequent development of the fact that the Registrar pursuance to the direction issued by this Court dated 30th October, 2001, has decided the controversy after hearing the parties by the order, which has been made in the subsequent writ petition. Thus, the application to recall the order dated 15th October, 2001, dismissing the Writ Petition No. 37935 of 1999 and the order of the Registrar dated 30th October, 2001, do not warrant interference by this Court and Civil Misc. Application No. nil of 2001 dated 16th October, 2001, for recall of the order dated 15th October, 2001 is hereby dismissed.

11. The view taken by the Registrar registering or refusal to register the change in the officebearers in Form "J" does not require any interference as it does not adjudicate upon any of the rights of the rival parties and it is always open to the parties to get their rights/elections set up by them adjudicated upon through civil court or as laid down in the Government order which is subject-matter of challenge in Writ Petition No. 26300 of 2002 before the District Judge in ? appeal. Apart from the Government order which provides that there is a provision of appeal so far as registering change of office-bearers in Form "J" or refusal to register change of office-bearers in Form "J" having been held by this Court to be purely administrative action as held by this Court in the decision in North Eastern Railway Mazdoor Union, Rail Mazdoor Bhawan, Gorakhpur v. Registrar of Trade Unions, Kanpur and Ors. 1969 L&C 209. The view taken by this Court in the aforesaid decision finds support from the decision in 1995 (71) FLR 257. wherein a Division Bench of the Patna High Court while interpreting the provisions of Sections 8 and 28 has approved the earlier Division Bench's decision of the Patna High Court and also the decision of this Court, referred to above, in 1969 L&C 209 and giving reference to the view taken by the Madras High Court, Andhra Pradesh High Court and the Calcutta High Court came to the conclusion as under :

"On an examination and analysis of the Patna decision in Mukund Ram Tanti's case (*supra*), the Allahabad, Andhra and the Madras decisions, I come to the following conclusions :

(i) In a dispute between two rival factions claiming to be the officer-bearers of a Trade Union, it is open to the Registrar to hold an enquiry for the purpose of maintaining and updating 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 a union under his own supervision or under the supervision of his nominee.

(v) In the absence of any provision in the Trade Unions Act, 1926, any dispute of this kind can only be resolved by means of a suit filed before a civil court.

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

(vii) The Legislature will, therefore, be well advised to address itself to this lacuna in the Trade Unions Act and to take steps to remedy it which has been longer over due."

12. The aforesaid view taken by this Court and the Patna High Court has been reiterated by the learned single Judge of Jharkhand High Court in the case of *Ram Chandra Singh and Ors. v. State of Bihar and Ors.* 2002 (94) FLR 1153.

13. A perusal of analysis of the provisions of the Trade Unions Act clearly demonstrates that the rights conferred under the Trade Unions Act for holding elections is subject to the aforesaid Act and is neither a fundamental right nor a common law right. A close analysis of the aforesaid provisions further demonstrates that the elections held pursuant to the scheme of the Trade Unions Act are not subject to any challenge under any provisions of the Statutes, namely, Trade Unions Act. In other words, from the scheme stated above, it is clear that the said statute does not provide any machinery for challenging the elections held under the said Act and the Registrar has absolutely no right, authority or jurisdiction to adjudicate upon any elections set up by any of the rival faction or any other person. The power of the Registrar has been held by this Court and the other High Courts referred to above in the preceding paragraphs are purely administrative to register the change of the office-bearers

for the purpose and communication with the officebearers only for administrative purpose in order to ensure the compliance of the provisions of the Trade Unions Act and Rules as has been observed by the Division Bench of the Patna High Court. The Registrar of the Trade Unions Act has not been conferred with the power for holding elections of the Trade Unions, superintendence of the elections of the Trade Unions of conduct of the elections of the Trade Unions. This view of mine finds support from the observation of the Apex Court in the case in Jyoti Basu and Others Vs. Debi Ghosal and Others, :

"..... right to elect, fundamental though it is to democracy is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of Statute, there is no right to elect, no right to be elected and no right to dispute election. Statutory creations they are, and therefore, subject to the statutory limitation....."

14. In this view of the matter, right to dispute an election of a Trade Union since has not been conferred under the Statute, namely, Trade Unions Act, remedy under the original civil law, i.e., filing of civil suit is the only remedy and since that remedy is available, this Court in exercise of power under Article 226 of the Constitution of India will not interfere with either register in the change of office-bearers or refusal to register the change of the office-bearers by the Registrar of the Trade Union in Form "J".

15. In this view of the matter, both these writ petitions deserves to be dismissed.

16. For the reasons stated above. Civil Misc. Application No. nil of 2001 dated 16th October, 2001, for recall of the order dated 15th October, 2001, filed in Civil Misc. Writ Petition No. 37935 of 1999, deserves to be dismissed and is hereby dismissed. The Civil Misc. Writ Petition No. 39766 of 2001 and Civil Misc. Writ Petition No. 26300 of 2002 also deserve to be dismissed and are hereby dismissed. The interim order, if any, stands vacated. There will be no order as to costs.