

(2011) 02 DEL CK 0356
In the Delhi High Court
Case No : CS (OS) No. 1288 of 2008

Pramod Kumar Nayak and Another	Vs	APPELLANT
Niranjan Das		RESPONDENT

Date of Decision : 18-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1, Order 6 Rule 14
Constitution of India, 1950 — Article 31A(1)
Trade Unions Act, 1926 — Section 13

Citation : (2011) 02 DEL CK 0356

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Rajiv Talwar and Karan Chawla, for the Appellant; None, for the Respondent

Judgement

V.K. Jain, J.—This is a suit for permanent injunction. plaintiff No. 2 is a trade union registered under the Trade Union Act, 1926 whereas plaintiff No. 1 is its Organizing Secretary. It is alleged that the Defendant, who was elected president of plaintiff No. 2 union in the elections held on 10th-11th April, 1998 took retirement from FCI and then resigned from the post of President on health grounds sometime in the year 2001.

2. CS(OS) No. 681/1999 was filed by plaintiff No. 2 against one H.P. Singh, which was decreed vide judgment dated 30th March, 2006 directing holding of election under the supervision of a Court Commissioner. An appeal filed against the judgment dated 30th March, 2006 being RFA(OS) No. 33/2006 was dismissed by a Division Bench of this Court on 15th December, 2006. The elections were directed to be held under the supervision of Hon'ble Ms. Justice Usha Mehra, a former Judge of this Court. An affidavit dated 28th April, 2008 was filed by the Defendant before Hon'ble Ms. Justice Usha Mehra admitting therein that he had retired as an employee of the FCI and had also resigned from the post of the President. He further claimed that his signatures had been forged on the membership cards since he ceased to be the President of the Union in the year

2001.

3. However, the Defendant wrote letters dated 17th June, 2008 to Mr. Rajiv Talwar & Co. (Advocates) and Mr. Bharat Sangal (Advocates) claiming to be the President of plaintiff No. 2 union. The letter is alleged to have written on the stolen letterhead of the Union. The Defendant also wrote a letter dated 17th June, 2008 to FCI claiming to be the President of plaintiff No. 2 union. That letter was forwarded by FCI to the plaintiff on 27th June, 2008.

4. The case of the plaintiffs is that having retired from FCI and having resigned from the post of President, the Defendant cannot claim to be even a member of plaintiff No. 2 Union and certainly cannot claim to be its President. The plaintiffs have accordingly sought an injunction restraining the Defendant from acting and/or representing himself as President of plaintiff No. 2 and from holding and/or convening any meeting of plaintiff No. 2 Union and collecting funds in its name. They have also sought injunction against interference in the peaceful possession and control of the assets of the plaintiff No. 2 by the Defendant.

5. Vide an interim order dated 15th July, 2008, this Court restrained the Defendant from collecting subscription money and issuing receipts and acting as the President of the plaintiff No. 2 Union.

6. The Defendant was proceeded ex parte vide order dated 25th September, 2008.

7. The plaintiffs have filed the affidavit of plaintiff No. 1 Mr. Pramod Kumar Nayak by way of ex parte evidence. In his affidavit Mr. Nayak has stated that he is a worker of FCI and was elected Organizing Secretary of plaintiff No. 2 in the election held on 11th April, 1998. He has further stated that the Defendant was an employee of FCI and was elected President of the plaintiff Union in the election of the office bearer held on 10/11.04.1998. He has stated that the Defendant, on the supposedly medical ground and ill health, resigned from the FCI sometime in the year 2001. He has also stated that only the workers employed by FCI or employed as contract worker, as stated in the constitution of the Union, are entitled to be ordinary members of the plaintiff Union and only ordinary member has a right to be elected as an office bearer of the Union. He has also stated that the Defendant has retired from FCI and resigned from the plaintiff Union and has not been an ordinary member of the plaintiff Union inasmuch as the Defendant has not paid the subscription to the plaintiff Union since the year 2011. He has further stated that after passing of the orders in CS(OS) No. 422/2005 filed by one set of workers, the Defendant insisted that since he was elected in the last election held for the post of President in the year 1998, he should be deemed to be continuing as the President of the Union. The plaintiffs permitted him to attend various meetings of the office bearers under fear of being in disobedience of the orders passed by this Court. He has claimed that the acts of the plaintiff Union in allowing the Defendant to attend meetings, seeking his advice on Labour Welfare Scheme and paying his visiting charges etc.

do not entitle the Defendant to claim the post of President of the plaintiff-Union. He has further stated that the Defendant is collecting funds from the workers in the name of the Union.

8. A perusal of Ex.PW-1/3 which is the copy of the decision of this Court in CS(OS) 681/1999 and CS(OS) 2349/2000 shows that the Court directed Hon"ble Mr. Justice J.K. Mehra, former Judge of this Court, who had earlier been appointed as Court Commissioner vide order dated 20th October 2000, to hold elections of the plaintiff union in accordance with constitution of the union. It was further directed that all the members who had not paid their subscriptions shall be allowed to pay their arrears of subscriptions within two months of the date of notice and those who clear the arrears of subscriptions shall be entitled to contest the election as well as cast their votes.

9. RFA(OS) 33/2006 filed against the aforesaid decision of this Court was dismissed by a Division Bench of this Court vide its decision dated December 15, 2006. Since Hon"ble Mr. Justice J.K. Mehra had in the meanwhile expressed his unwillingness to continue, Hon"ble Mr. Justice V.S. Aggarwal was appointed as the Court Commissioner.

Hon"ble Ms. Justice Usha Mehra was then appointed as the Court Commissioner in place of Hon"ble Mr. Justice V.S. Aggarwal to hold elections of the plaintiff company.

10. A perusal of the affidavit dated 28th April 2008 (Ex.PW-1/6) filed by the Defendant before the Court Commissioner would show that in para 2 of the affidavit, he expressly stated that he was elected as the President of the Respondent union in the elections held on 11th April 1998 and thereafter due to his health reasons he not only resigned from the post of President but also retired as an employee of FCI. He further stated that the Respondent union had been fraudulently and without his authority issuing membership cards under his signature and the office bearers were guilty of forging his signature on the membership cards as he had ceased to be a member/President of the union since 2001. He thus took the stand that he, on account of his having retired from FCI and having resigned from the post of President, was no more the President of plaintiff No. 2 union. However, vide letter dated 17th June 2008 (Ex.PW-1/9) written to Bharat Shangal & Associates, the Defendant, representing himself as the President of the plaintiff union, removed the above firm from the penal of advocates to represent the union before any legal fora. A copy of this letter was endorsed to the Court Commissioner as well to the Registrar of this Court.

11. The affidavit of the Defendant coupled with the admission made by the Defendant in his affidavit dated 28th April 2008 submitted to the Court Commissioner clearly shows that not only had he retired from the services of FCI, he had also resigned as the President of the plaintiff union. This is also not the case of the Defendant that he had withdrawn his resignation at any point of time. The resignation therefore became effective from the date it was submitted.

Having resigned from the post of the President of the union, the Defendant has no right to hold himself out as its President unless he is reelected as President of the union. However, there is no evidence of the Defendant having been reelected as President of the plaintiff union. In fact, a perusal of Ex.PW-1/13, which is the declaration of final result of the elections conducted by the Court Commissioner Hon"ble Ms. Justice Usha Mehra would show that one Sh. Maheswar Yadav was elected as President of the plaintiff union on 12th August 2009. A perusal of Clause 1 of the Constitution of the plaintiff union shows that this union is a combination of workers employed by FCI directly or through its agents or contractors. Clause 9 of the Constitution provides that no member of the union shall enjoy the rights of a member and be entitled to any benefits thereof under the rules of the union unless he has been a member for 12 months and has paid all his dues to the union. It is logical to say that since the plaintiff union is supposed to be consisting only of serving employee of FCI, the moment a person retires from the services of FCI or resigns from the post held by him in FCI, he also ceased to be an ordinary member of the union, though he can be admitted as an honorary member in the general meeting of the union in terms of Clause 10 of the Constitution. Since the Defendant took the retirement from FCI, he also ceases to be a member of the plaintiff union, on his demitting the office held by him with FCI.

12. Clause 7 of the Constitution of the union provides that no member shall remain a member of the union if he is in arrears of subscriptions for three months and does not clear the dues by the end of three months. He however is eligible for readmission in case he clears all the dues within 30 days of the date on which he ceases to be a member. The affidavit of plaintiff No. 1 shows that the Defendant was in arrears of subscription since the year 2001. Consequently he ceases to be an ordinary member of the union under Clause 7 of the Constitution of the union. As a consequence, he ceased to be President of the union, the moment he ceased to be its member.

13. Thus, the Defendant has ceased to be the President of the plaintiff union for three months. Firstly because he resigned from the post of the President as admitted in the affidavit dated 29th April 2008 submitted by him to the Court Commissioner, secondly, because he took retirement from FCI and thirdly because he was in arrears of subscription for more than three months. In any case, since a new person has been elected and declared as a President of the union, the Defendant has no right to claim that he continues to be the President of the plaintiff union.

14. During the course of arguments, I asked the learned Counsel for the plaintiffs to satisfy me that plaintiff No. 1 has the authority to file this suit on behalf of plaintiff No. 2 union. Relying on the provisions contained under Order XXIX Rule 1 of the Code of Civil Procedure, it was contended by the learned Counsel for the plaintiffs that since plaintiff No. 1 was elected as the Organizing Secretary of plaintiff No. 2 union and even otherwise being the Organized Secretary, he is a

Principal Officer of the union, he is competent to sign and verify pleadings as well as institute the suit on behalf of plaintiff No. 2 union. The learned Counsel for the plaintiffs has relied upon the decision of the Supreme Court in *Daman Singh and Others Vs. State of Punjab and Others*, where, it was held that a cooperative society was requested under Punjab Cooperative Societies Act a "cooperation" within the meaning of Article 31-A(1)(c) of the Constitution. The provisions of Section 30 of Punjab Cooperative Societies Act, 1961 are similar to the provisions contained in Section 13 of Trade Unions Act, 1926. Section 30 of Punjab Cooperative Societies Act provides that the registration of a cooperative society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal, and with power to hold property, enter into contract, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted. Section 13 of Trade Union Act provides that every registered Trade Union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued. It was observed by Rajasthan High Court in *Nagar Vikas Pradhikaran Kamgar Sangh Vs. Jaipur Vikas Pradhikaran*, that a for the purpose of Order XXIX, a corporation may be stated to be a body authorized by law to act as one individual and constituted either by prescription, by Letters Patent or by Act of Legislature. The term "corporation" has not been defined in the CPC and, therefore, I see no reason for not applying the interpretation given by Supreme Court to a cooperative society registered under Punjab Cooperative Societies Act, 1961, to a trade union to which the provisions of Section 13 of Trade Unions Act, 1926 apply. Consequently, plaintiff No. 2 would be a corporation within the meaning of Order XXIX Rule 1 of the Code of Civil Procedure.

15. Coming to the contention of the learned Counsel for the plaintiffs that being Organizing Secretary plaintiff No. 1 is its Secretary and therefore he is competent to sign and verify pleadings on behalf of the society. One of the possible interpretation of the expression Secretary, in the context of plaintiff No. 2 union, when examined in the light of its Constitution, can be that since the society also has a General Secretary, it is only the General Secretary, who can be said to be its Secretary within the meaning of Order XXIX Rule 1 of the CPC but, another equally plausible interpretation can be that there can be more than one Secretary of corporation which in this case is a union and, therefore, not only the General Secretary but, also the Organizing Secretary would be a Secretary within the meaning of Order XXIX Rule 1 of the Code of Civil Procedure.

16. The expression "Principal Officer" has not been defined in the Code of Civil Procedure. The contention of the learned Counsel for the plaintiffs is that all the office bearers of a union would be its Principal Officers within the meaning of Order XXIX Rule 1 of the CPC and, therefore, plaintiff No. 1 would also be one of the Principal Officers of plaintiff No. 2 union. He has further contended that the Secretary or a Principal Secretary of cooperation is competent to sign and verify

pleadings even without an authorization from its Board of Directors/Executive Committee, as the case may be. In this regard, he has placed reliance on the decision of the Supreme Court in *United Bank of India Vs. Naresh Kumar and others*, . In the above referred case Supreme Court, reading the provisions of Order VI Rule 14 of the CPC together with Order XXIX Rule 1 thereof was of the view that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. It was further held that in addition thereto and dehors Order XXIX Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorize any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order VI Rule 14 of the Code of Civil Procedure. I, however, need not delve further into this issue for the simple reason that even if it is presumed that plaintiff No.1. has no locus standi to file the suit on behalf of plaintiff No. 2 union, he being an office bearer of the union can institute a suit in his individual capacity to restrain an outsider from holding himself out as the President of the union of which he is the Organizing Secretary. I, therefore, hold that the suit filed by plaintiff No. 1 is maintainable.

For the reasons given in the preceding paragraphs, the Defendant is hereby restrained from representing, claiming or holding himself out as the President of plaintiff No. 2 union. He is also restrained from convening any meeting of plaintiff No. 2 and collecting any subscription, etc. claiming to be its President. In the facts and circumstances of the case, there shall be no order as to cost.

Decree sheet be prepared accordingly.