

(1990) 10 GAU CK 0011
In the Gauhati High Court
Case No : Civil Rule No. 425 of 1990

Ratan Kumar Dey

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-10-1990

Acts Referred:

Trade Unions Act, 1926 — Section 26, 26

Citation : (1990) 2 GLJ 391

Hon'ble Judges : S.Haque, J and J.M.Srivastava, J

Bench : Division Bench

Advocate : B.K.Das, S.Sarkar, N.Mohammad, D.Majumdar, M.A.Laskar,
Advocates appearing for Parties

Judgement

J.M. Srivastava, J.—The petitioners who claim to be the office bearers of the Cachar Paper Project Workers and Employees Union hereinafter referred as the "Union" pray for direction to the respondents to make over charge of the Union to petitioner Nos. 1 and 4 and the respondent Nos. 3 and 4 not to operate the bank account of the Union.

2. The petitioners' case was that the petitioners who are employees alongwith other workers of the Hindustan Paper Corporation Ltd. hereinafter referred as the "Corporation", in its Cachar Paper Mills, Panchgram, hereinafter referred as the "Mill" had formed the Union duly registered under the Trade Unions Act, 1926 hereinafter referred as the "Act". The office bearers of the Union held office for a period of one year. The respondent Nos. 3 and 4 were President and Secretary of the Executive Committee of the Union for the previous year 1989. A members requisitioned meeting was held on 19. 2. 90 when a new Executive Committee was constituted with the petitioners as office bearers, the petitioner No. 1 being the President and the petitioner No. 4 its General Secretary. The management of the Corporation was informed of the formation of the new Executive Committee by letter dated 23. 2. 90. The Union has S. B. Account No. 2183 with the Central Bank of India, Panchgram Branch After the formation of the new committee, the

respondent No. 4 had tried to operate the said Account which was not correct. The petitioners and four members of the Union selected on 19. 2. 90 informed the Branch Manager, Central Bank of India, Panchgram Branch not to allow operation of the bank account. The respondent Nos. 3 and 4 had not made over charge to the petitioners. ,Hence the petition under Article 26 of the Constitution of India, for the aforesaid reliefs was filed on 17. 3. 90

3. The respondents have resisted the petition and their contention was that the petitioners have no authority to represent the Union. The petitioners were not President and General Secretary of the Union. During the pendency of this petition elections were held on 30.4,90 and the respondents were elected officebearers of the Union. It. was further stated that the petition under Article 27 6 of the Constitution of India was not maintainable in respect of dispute between office bearers of the Union and further that in the disputed facts relating to the elections of office bearers of the Union and the like, the remedy was by civil suit.

4. We have heard Shri M. A. Laskar, learned counsel for the petitioners and Shri B K. Das, learned counsel for the respondents, considered the submissions and the materials on record.

5. Shri B.K. Das, learned counsel for the respondents has contended that the petition is in substance about dispute between rival office bearers of the Union and hence the jurisdiction of this Court under Article 226 of the Constitution of India could not be invoked.

6. Shri M. A Laskar, learned counsel for the petitioners on the other hand has strenuously refuted that there was any dispute and has urged that the relief sought was for direction to the respondents to hand over charge and to allow the petitioners to operate the bank account on behalf of the Union. The petitioners' submission was that the respondent Nos. 3 and 4 who were admittedly the office bearers for the year 1989, had ceased to be office bearers after a section of members of the Union had opted for merger in a meeting on 14. 12.89 with Bharatiya Pulp, Paper and Straw Boird Mazdoor Sangh hereinafter referred as the "Sangh" and the Bharatiya Mazdoor Sangh hereinafter referred as the "Mazdoor Sangh" and that at a requisitioned meeting on 19. 2. 90 the petitioners were selected office bearers. The respondent Nos. 3 and 4 have disputed the contentions. Their version was that there was no merger with the Sangh, that a resolution for affiliation of the Union with Sangh was adopted but the terms not being acceptable the resolution was recalled or cancelled. The respondent Nos. 3 and 4 had never ceased to be officebearers. The requisitioned meeting was illegal that in April at a fresh elections held the respondents were lelected office bearers. The petitioners in the rejoinder affidavit assail the Union election of April "90 as fraudulent and illegal.

7. On careful consideration of the above facts, and submissions for the parties, we think that how so ever the reliefs may be worded would not make any material difference to the basic fact that the dispute was between rival office

bearers of the Union. Even though Union of India and the Corporation were made respondent Nos. 1 and 2, there should be no doubt that of dispute between the office bearers of the Union is sought to be adjudicated. The petitioners basically claimed relief against respondent Nos. 3 and 4, the rival office bearers. The Union of India and the Corporation had hardly anything to do with the Union and the dispute as to who were the office bearers.

8. The dispute being of private nature between the office bearers of the Union, direction to the respondents sought, in effect shall be direction to respondent Nos. 3 and 4 who also claim to be the office bearers of the Union.

9. Shri B. K. Das, learned counsel for the respondents has also submitted that in case of dispute between the office bearers of Union, the matter should be taken up by "he Registrar of Trade Unions under section 28 of the Act. The provisions of section 28 said above are for record of the office bearers etc, of a Union and the Registrar has to be intimated about change of office bearers and while for the purpose the Registrar may make inquiries to enable him to maintain proper record of change etc. the Registrar has no jurisdiction to settle any dispute, between rival office bearers Shri B. K. Das, learned counsel for the respondents cited *Sanjiva Reddy vs. Registrar of Trade Unions*, 1969 (1) LLJ 11 (Andhra Pradesh) where the Court held that the Registrar could make necessary inquiry into the rival claims of the office bearers of the Union and reach his own conclusion. While it may be that the Registrar may make inquiries to reach his own conclusion for the purpose of maintaining the record of the office bearers of the Union, we think that no reference can be made to him for adjudication of the dispute relating to rival claim by office bearers of the Union. It was held in *Sanjiva Reddy (supra)* that the only proper remedy was by civil suit and that the writ jurisdiction under Article 226 of the Constitution was not the proper remedy.

10. Shri B. K. Das, learned counsel for the respondents also cited *North Eastern Railway Mazdoor Union vs. Registrar of Trade Unions*, 1969 Lab. 1C 209 (Allahabad) where it was held that the Registrar has no power to hold enquiry in conflicting rival claims of the office bearers of the Trade Unions and that where the Registrar exercises his power under section 28 of the Trade Union Act no writ application could lie against making of such record by the Registrar.

11. In the present case no such relief or direction has been sought against the Registrar of Trade Unions, who has not even been made party in this petition.

12. Besides as said before in the dispute between the rival office bearers of the Union, the Registrar of Trade Union has no authority or power under section 28 of the Trade Unions Act, 1926 to decide the dispute, even though he has power to make his enquiries and come to his own conclusion in the matter for the purpose of maintenance of record of office bearers of the Union.

13. We, therefore, think that the dispute being related to rival claims of office bearers of the Union, a private dispute, the writ jurisdiction of the Court under Article 226 of the Constitution of India is not available and cannot be invoked.

14. It may also be noted that contentions between the parties, raise several disputed questions of fact which cannot, in our opinion be properly Determined in this petition, for example whether any decision for merger had been taken or that it was merely a decision for affiliation, whether it was revoked, how many members had conducted the meeting to take the said decision for so called merger, whether the members who had asked for requisitioned meeting, were competent to do so, whether the office bearers could be selected after section 8 of the Constitution of the Union had been amended earlier in 1987 and the word selection was omitted, whether the election held on 30. 4. 90 was in order and several other questions of fact which are all matters of dispute between the parties. In our opinion, to resolve such disputed questions of fact between the parties, the writ jurisdiction of this Court is not the appropriate remedy. The proper remedy in such disputes which can be decided only on evidence should be civil suit where the parties may adduce their evidence, on consideration of which the Court may decide the dispute. We hold accordingly.

15. However, if the petitioners' contention be considered on merit, its basis was that about 107 members of the Union on 4. 12. 89 had held a meeting where a decision was taken to merge with the Sangh and Mazdoor Sangh, with the result that the respondent Nos. 3 and 4 who had been the President and General Secretary of the Union, in the year 1989, had ceased to be members of the Union, and thereafter at the requisitioned meeting on 19. 2. 90 the new Executive "Committee and the office bearers were selected according to the Constitution, by the Union and during the pendency of this petition in this Court thereafter the management without any a theory had purported to call special general meeting in April, 1990 at which the respondents were stated to have been duly elected at an elections which was illegal. The contention on behalf of the respondents was that at the meeting on 14th December, 1989 the decision taken was to affiliate the Union with the Sangh and the Mazdoor Sangh but after four days it was found that the decision taken could not be implemented and hence it was cancelled. The office beaters of the Union had continued and there was no question of any merger of the Union with the Sangh and the Mazdoor Sangh that the so called requisitioned meeting on 19. 2. 90 was therefore illegal. The petitioners have no right to maintain the petition. Subsequently at the special general meeting held in April, 1990 the management as in earlier years had only appointed the Returning Officer to hold the election which was duly held and was valid.

16. It may thus be seen that the petitioners entire case rested on the contention that there was merger of part of the membership of the Union with the Sangh and the Mazdoor Sangh, a fact denied by the respondents,

17. Annexure IX with the counter affidavit is the resolution adopted at the meeting held on 14th December, 1989. It reads as under ;

"Resolution adopted in the Executive Committee meeting of Cachar Paper Project Workers and Employees Union held at Panchgram on 14th December, 1989 under

the President ship of Shri Sushanta Ghosh.

Resolution No 1 "Resolved unanimously that the Cachar Paper Project Workers and Employees Union shall be affiliated to the Bharatiya Pulp, Paper and Straw Board Mazdoor Sangh as well as the Bharatiya Mazdoor Sangh with immediate effect." (emphasis supplied)

Resolution No. 2 "Resolve unanimously that the Cachar Paper Project Workers and Employees Union shall abide by the Constitution of the Bharatiya Pulp, Paper and Straw Board Mazdoor Sangh as well as the Bharatiya Mazdoor Sangh. Resolved further that the Cachar Paper Project Workers and Employees Union shall adhere to the Rules and Regulations. Principles, Directions, Programmes, Activities as set by the Bharatiya Mazdoor Sangh or its Zonal/State/District Body from time to time."

Resolution No. 3 "Resolved unanimously that the General Secretary of the Cachar Paper Project Workers and Employees Union shall be authorised to take necessary steps to get the affiliation from the Bharatiya Pulp, Paper and Straw Board Mazdoor Sangh as well as Bharatiya Mazdoor Sangh." 107 members were stated to have participated in the said meeting.

18. The above resolution itself shows that the decision was to affiliate with the Sangh, which clearly means that the Union had retained its identity and continued to exist as such. The submission for the petitioners that there was merger of the Union with the Sangh was clearly not correct. We have not found anything in the Constitution of the Union to show that any merger as urged was permissible or what the expression merger could mean. In view of the submission made for the petitioners, "merger" meant that part of the Union has become integral part of the Sangh and had lost its identity as a body, that is, that the identity of the Union was totally or completely lost. "Merger" in Chamber's 20th Century Dictionary (New Edition 1983) means "to dip or plunge, to cause to be swallowed up or absorbed in something greater to cause to coalesce, combine or amalgamate." It may therefore be clear that the petitioners' contention was that the part of the Union had amalgamated with or was absorbed by the Sangh. The resolution dated 14.12.89 does not bear out the contention. The decision was to affiliate with the Sangh which was distinctly a very different proposition. "Affiliation" means "to adopt or to attach as a member or branch to become closely connected or to associate, to fraternise."

19. The resolution adopted on 14.12.89 was therefore just to get closely connected, or associated with the "Sangh" which obviously did not mean loss of identity of the "Union". We, therefore do not accept the petitioners' contention that any merger as such had taken place, with the result that the Union and its office bearers had not lost their identity and had continued to exist as before.

20. Even that resolution dated 14.12.89 was cancelled ;t the meeting on 18.1 ",8 by resolution Annexure X which read as under ;

Resolution No. 1 It is resolved unanimously that since the terms and conditions set up by the Bharatiya Pulp, Paper and Straw Board Mazdoor Sangh as well as the Bharatiya Mazdoor Sangh are not acceptable as these involve change of the name of our Union and amendment of certain basic clauses of our existing Constitution it has been decided unanimously that resolution No, 1,2 and 3 of the Executive Committee Meeting dated 14.12.89 will not be given effect to, which therefore stand cancelled and abolished w.e.f. 18.12.89.

Resolution No. 2 It is resolved unanimously that our Union will not create and maintain any sort of relationship with the Bharatiya Pulp, Paper and Straw Board Mazdoor Sangh. The meeting ended with a vote of thanks from the chair?

21. Shri Lasker, learned counsel for the petitioners submitted that the subsequent resolution was "manipulation" and of no consequence. We have not found any good reason to think that there was any manipulation because there was really no need for it, the "Union" having earlier decided only to get affiliated. As said before there was no merger and hence there was no need for any fictitious manipulation in the matter.

22. In the above view of the matter there is no need to examine any other contention for the parties.

23. For the aforesaid reasons, this petition fails and is dismissed. We, however, make no order as to costs.