

(1973) 07 OHC CK 0021
In the Orissa High Court
Case No : O.J.C. No. 872 of 1971

Salil Kumar Seal

APPELLANT

Vs

General Manager, Ferrochrome Plant Project

RESPONDENT

Date of Decision : 12-07-1973

Acts Referred:

Constitution of India, 1950 — Article 12, 19(1), 19(4), 226

Citation : (1973) 39 CLT 816

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : P. Palit and J. Patnaik, for the Appellant; G.S. Rath and N.K. Patnaik, for the Respondent

Judgement

R.N. Misra, J.—This is an application under Article 226 of the Constitution for a writ of mandamus to the opposite party in the following circumstances. The Petitioner is the, Secretary of the Ferrochrome Project Employees Union (hereinafter referred to as the Union) which has been (registered under the Trade Unions Act, 1926. The Ferrochrome Plant at Jajpur is a unit of the Industrial Development Corporation of Orissa Ltd., a Government of Orissa undertaking. The opp. party is its General Manager.

It is not disputed that the Union is not the recognised union so far as the employer is concerned. It is alleged that there is a worker's colony situated near about the factory premises where about 400 workers reside. Adjoining this colony there exist the playground, the canteen and the daily market. According to the Petitioner these have been fenced up by a high boundary wall and at the two outlets security guards have been posted who scrupulously control coming in and going out into the area. The Petitioner and the other office-bearers of the Union who according to the Petitioner are entitled to the fundamental right under Article 19(1)(c) of the Constitution to freedom of association and to carry on other activities connected with problems of labour employment are not being permitted to go into the workers colony and in spite of repeated demands, no

steps have been taken by the employer to ensure the facilities to the Petitioner and other office-bearers of the Union. Therefore, relief has been asked for in the writ application for a direction that the opposite party shall withdraw security guards posted at different outlets of the boundary wall erected around the workers colony, the canteen, the playground and the daily market and for a direction not to obstruct the members of the Union to assemble peacefully and conduct their activities in accordance with law.

2. In the counter affidavit the General Manager has taken the plea that the Industrial Development Corporation of Orissa which is the real employer should have been impleaded in the proceeding. It is next contended that the writ application is not maintainable in view of the fact that the Corporation is not "State" as understood under Article 12 of the Constitution. It is also contended that with the fundamental right of the Petitioner and the Union under Article 19(1)(c) of the Constitution there is no interference. In paragraph 17 of the counter affidavit it has been asserted,

That the averments made in paragraph 10 are not correct inasmuch as the factory and the workers colony are located within an area of 250 acres of land and the entire area is bounded partially by walls and fenced by barbed wires. In the workers colony which is contiguous to that of the factory about one hundred forty-nine workers only reside and inside the boundary only there exists the workers play ground, canteen and daily market.

In paragraphs 18, 19 and 20 it has also been asserted,

18. That the averments made in paragraph 11 are incorrect inasmuch as the entire area, as aforesaid is bounded by wall and barbed wire fencing and there is no boundary wall around the workers' colony, canteen and daily market alone as alleged in the petition. This boundary wall has two outlets and security guards are placed to prevent saboteurs, unauthorised entrants, hooligans and goondas who had earlier perpetrated several crimes inside the boundary including that of murder.

Systematic intimidation and obstruction of wilful and loyal workers of the Industrial Development Corporation of Orissa Limited are going on.

19...The area was bounded with a view only to prevent unreasonable and lawful (unlawful) elements from getting into the premises and create situation which would not be in keeping with the peace and security of the workers working and staying inside the area. The intention and conduct imputed to the opposite party and the alleged instruction given to the Security Guards to allow only selected outsiders and obstruct the entry of union leaders are baseless and false

20...It can be said that the Petitioner and others have time and again tried to trespass and trespassed into the factory premises effecting forcible entry through the gate where security guards are posted with a view to create disturbance in the name of union work. They have been prevented from effecting their entry

forcibly and for having trespassed into the factory premises they have been also reported against before the Officer-in-charge, Sukinda, Police Station by the opp. party....

The fundamental right relied upon by the Petitioner in Article 19 (1)(c) of the Constitution is to the following effect:

(1) All citizens shall have the right,

x x x

(c) to form associations or unions; Sub-article (4) prescribes the limit to the right guaranteed under Sub-article (1)(c).

3. On the allegations made in this writ petition it cannot be found that there has been any interference with the forming of a union. The right under Sub-article (1) (c) to form a union of workers does not carry with it the concomitant right of working effectively as a trade union. In fact in All India Bank Employees' Association Vs. National Industrial Tribunal and Others, the learned Judges have indicated that the right of effective collective bargaining is not within the fold of Sub-article (1)(c) of Article 19. The Trade Union Act does not confer the right which the Petitioner seeks to establish. The Indian Trade Unions (Amendment) Act of 1947 (Act XLV of 1947) intended to confer certain rights on recognised unions, but those provisions have not yet come into operation. Besides the union which the Petitioner represents is not also recognised.

4. In the instant case it appears that the factory and the labour colony are located within an enclosed area. There has been allegation of gross indiscipline and even instances of murder. Regulation of entry and exit into the area seems to be in the interest of the industry itself and even of the workmen. No employee has come forward to make grievance in this case of any inconvenience caused to him by the control exercised by the opposite party at the entrance. We do not think a case has been made out by the Petitioner for any relief. We do not propose to examine the various other contentions regarding maintainability of the writ petition because even without those technicalities being raised against the Petitioner, in our opinion, no case calling for interference has been made out. The writ petition accordingly fails and is dismissed, but in the peculiar circumstances of the case we direct the parties to bear their own costs.

K.B. Panda.

5. I agree.