

(2013) 08 DEL CK 0389

In the Delhi High Court

Case No : Writ Petition (C) 4913 of 2013 and CM Appls. 11134-11135 of 2013

Sanjiv Mukherjee and Another

APPELLANT

Vs

General Manager, Northern Railway and Another

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Citation : (2013) 08 DEL CK 0389

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Rajeev Mishra and Mr. S. Anand Ramakrishnan, for the Appellant; Kumar Rajesh Singh, Advocate for Respondent No. 1, Mr. Sudhir Nandrajog , Mr. Kirtiman Singh and Mr. T. Singhdev, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—Present writ petition has been filed praying for a writ of Mandamus declaring that as per Rules 18, 20 and 28 of the constitution of Uttariya Railway Mazdoor Union (for short "URMU"), respondent No. 2 had ceased to be its Member and consequently its General Secretary. Learned counsel for petitioner submits that respondent No. 2 has no authority, power or competence to convene a Working Committee, Central Council and General Body Meeting on 05th and 06th August, 2013 inasmuch as respondent No. 2 is not even a primary Member of URMU and is not at all competent to hold any post.

2. Mr. Sudhir Nandrajog, learned senior counsel for respondent No. 2 submits that present writ petition is not maintainable inasmuch as URMU is a trade union and its rules are contractual in nature.

3. At this stage, learned counsel for petitioner draws this Court's attention to the letter dated 01st April, 2013 wherein the Railways has opined that acceptance of nomination form filed under respondent No. 2 signatures was in violation of Lucknow Civil Judge's decree dated 09th August, 2011 in Case No. 837/2010 as in accordance with the said order the faction led by Mr. C.P. Singh was declared

as office bearer and respondent No. 2 faction was restrained from interfering in the working of the Union. Consequently, he submits that if orders as prayed for are not passed, URMU runs the risk of being de-recognised by the Railways.

4. Mr. Sudhir Nandrajog, learned senior counsel for respondent No. 2 has today handed over photocopies of the order sheets dated 22nd May, 2013 and 27th May, 2013 passed in Suit No. 837/2010 by virtue of which the ex parte decree passed in favour of C.P. Singh faction has been set aside and the said suit has been dismissed as withdrawn in view of an out of Court settlement between the parties.

5. In the opinion of this Court, as the ex parte judgment dated 9th August, 2011 referred to by Railways and relied upon by the petitioner has already been set aside with consent of the parties, the Railways letter dated 01st April, 2013 is infructuous and inconsequential.

6. Further, this Court is of the view that disqualification of any office bearer of respondent-Union on the ground of violation of a rule cannot be adjudicated in a writ proceeding. In fact, a trade union dispute or an election dispute between rival factions of a union do not partake a public law character as they are inherently and intrinsically a private dispute which is not amenable to writ jurisdiction.

7. In fact, the Hon'ble Mr. Justice Vikramajit Sen (as he then was) in Pradeep Kumar and Others Vs. Union of India (UOI) and Others, with regard to elections of the present Union has held as under:-

19. A number of grounds have been raised by way of opposition to the entertaining and consideration of the writ petitions including the availability of an alternative remedy by way of an appeal, but I do not propose to go into those issues since the above discussion appears to me to be sufficient to decide this batch of matters. The ubiquitous opinion of High Courts in this country is that trade union disputes are not amenable to writ jurisdiction. Alternatively stated, these types of disputes do not partake of a public law character and are inherently and intrinsically private disputes. I cannot accept the argument of Mr. Maninder Singh that because the Railway Administration is called upon to grant leave and provide other assistance for attendance of union meetings, a public law character is superimposed on the trade union disputes. I also cannot accept that since it is in general public interest that affairs of URMU proceed on a peaceful and smooth pace that inter se trade union disputes would automatically wear the mantle of public law. Having arrived at this conclusion since it is ordinary civil courts which would have jurisdiction in regard to disputes pertaining to elections of a trade union, the appointment of the Commissioner to prepare the lists was without jurisdiction. On the strength of Harshad Chimanlal Modi the fact that all parties had consented to this appointment would not act as an estoppel to the challenge subsequently been mounted against such appointment. The wisdom of leaving this genre of disputes to be adjudicated by civil courts, after recording of

evidence, is illustrated from the fact that even though the List has been prepared by the Court Commissioner, a number of serious, not frivolous, objections have been raised against the List. If this Court were to further adjudicate these disputes it would lead to yet another error in the exercise of jurisdiction. The controversies pertaining to the factual matrix are not of a superficial nature, as can be duly decided by the Writ Court. Nor have they been raised only to oust or obstruct the exercise of the extraordinary powers of this Court predicated only on a sham or flimsy denial. On the interplay of three facts viz. absence of public law character, presence of disputed questions of fact and the ubiquitous view that it is not expedient to invoke writ jurisdiction in trade union matters, these petitions must be dismissed....

Consequently, the present writ petition and applications are dismissed. However, dismissal of the present writ petition shall not preclude or prejudice the rights of any of the parties from filing civil suit or pursuing any other available remedy in accordance with law.