

(1989) 10 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No. 3995 of 1989

Telco Kamgar Sanghatana and Others

APPELLANT

Vs

Avinash Pandurang Toro and Others

RESPONDENT

Date of Decision : 06-10-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Trade Unions Act, 1926 — Section 28(1A)

Citation : (1989) 59 FLR 819 : (1993) 3 LLJ 637

Hon'ble Judges : Tipnis, J;Desai, J

Bench : Division Bench

Advocate : R.J.K. Char, for the Appellant; K. Mohan and Pushpa Menon for R-1 to 5, for the Respondent

Final Decision : Allowed

Judgement

Desai, J.—This matter can be disposed of at the stage of admission. Accordingly Rule will issue. Smt. Menon for Respondents 1 to 5 waives service. Respondent No. 6 being the Tribunal is a formal party and need not be served. Advocates are heard.

2. By this Writ Petition the Petitioners have impugned an interim order passed by the Industrial Court, Pune on 5th September 1989. A substantive dispute was referred to the Industrial Court on 20th October, 1988 after obtaining the permission of the Registrar. This was numbered as Application ICTU No. 4 of 1988 and was one under the procedure contemplated by Section 28(1-A). As usual the proceedings considered in a very leisurely manner and till April of next year only the pleadings had been completed. It would appear that thereafter an interim order was sought for and passed by the Tribunal in September 1989, that is, nearly 11 months after the proceedings were concerned.

3. For passing an interim order and granting interim reliefs in this absolute terms pending the hearing and final disposal of the proceedings before it, the Tribunal or the Court must keep before itself several considerations viz;

(1) fairly strong prima facie case,

(2) grave prejudice if injunction is not granted,

(3) finally the Tribunal should be satisfied that grant of injunction is also justification on the principal of balance of convenience.

4. The objections taken to the election of the working president of the Union as are summarised at page 41 of the paper book before us are only technical and not one of substance. It is the contention of the union and the managing committee that the managing committee almost unanimously supported the creating of the post of working president and the election of Petitioner No. 2 to this post. At the meeting of the general body held on 21st July, 1988 in pursuance of the decision of the managing committee of 1st July 1988, more than 7,000 members of the union out of the total membership of 8,500 were present and the resolutions, including the one for creation of this post and for appointment or co-option of petitioner to the post, as somewhat inelegantly put, were unanimously approved. With this background the Court would normally, in our opinion, be required to come to the conclusion in order to pass interim order after eleven months that such a post was beyond the purview of the constitution of the union. If the amendment was ultra vires the constitution then certainly an interim order would be justified; but then the Tribunal could on the same footing have passed the final order. Merely because notice was purportedly vague or fell short of a day or two would not be relevant consideration for passing such interlocutory order after the interval of eleven months particularly when the resolution appears to have been unanimously passed at the meeting of 21st July, 1988. In such proceedings under the Trade Unions Act we are concerned with industrial democracy and not technicalities. Industrial Democracy does not require the wishes of overwhelming majority, if not the totality of members to be thwarted particularly by the making of interim orders by resort to technicalities.

5. We have also considered the powers of the working president. It has been alleged that the working president is tampering with the moneys of the union and operating the bank account. This has been denied. In our opinion the working president cannot in law do so. There are two reasons for this. In the first place under the constitution the working president acts only when the president is absent. In the second place the working president is supposed to act in concert with one of the vice presidents. We are told that it is not the intention of the working president petitioner No. 2 to operate the bank account or utilise the funds of this union and that he only proposes to carry on the organisational work which may include representing the workers or petitioner No. 1 in such proceedings as may take place officially or unofficially.

6. With this background, therefore, and bearing in mind the nature of the objection taken to the resolutions, we see no warrant for the Industrial Tribunal to pass the impugned interim order. Bearing in mind the particular background of this institution it has become necessary for the High Court to exercise its

jurisdiction under Article 226 of the Constitution of India. We may add further, although the petitioners have not referred to that constitutional provision, that Article 227 confers powers of superintendence on the High Court over decisions of Industrial Court and Tribunal. This is one decision which is required to be controlled under our power of superintendence. It does not matter that the petitioners have only mentioned of Article 226 in the title of the Petition. If the power of superintendence subsists in this Court, as it undoubtedly does then that power can be exercised.

7. Apart from quashing the interim order it would also seem to us desirable that the proceedings are now transferred from the Court of Shri Banswal to some other Member of the Industrial Court in Pune. We are told that there are two other Members of the Industrial Court in Pune. In our order, therefore we propose to direct the President, Industrial Court to assign the further hearing of this matter to some Member of the Industrial Tribunal at Pune other than Shri Banswal.

8. Accordingly the Rule is made absolute in terms of prayer (a). However, the working president undertakes to this Court that he will not operate the bank account or utilise the funds of this union in his capacity as the working president. Hearing of the Reference Application is expedited. The President, Industrial Tribunal, is directed to transfer the matter (Application ICTU No. 4 of 1988) to some other Industrial Tribunal at Pune and we direct such assignment to take place on or before 31st October, 1989 and the newly assigned Court to dispose of the matter by 31st January, 1990 at the latest. This is the outside limit and should not preclude the Tribunal from disposing of the matter earlier if possible. We only hope that the concerned parties will co-operate with the newly assigned Industrial Court. As this is an industrial matter the parties are directed to bear their own costs of the Writ Petition. Writ to be sent down forthwith. President of the Industrial Court to report compliance.