

(2015) 02 JH CK 0130
In the Jharkhand High Court
Case No : Writ Petition(C) No. 6869 of 2012

Telco Workers Union

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:

Trade Unions Act, 1926 — Section 10, 10(1), 6, 8, 9

Citation : (2015) 4 AJR 801

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : K.N. Choubey, V.P. Singh, Senior Advocates, Amit Kumar Das, Arun Kumar Singh, Ashok Kumar Singh and Rashmi Kumari, for the Appellant; Ajit Kumar, A.A.G., Saket Upadhyay, J.C. to A.A.G., Syed Ramiz Zafar and Ananda Sen, Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.

I.A. No. 903 of 2014

1. This application has been filed seeking intervention in the writ petition.

The learned counsel for the intervenors submits that the proposed intervenors are the members of Telco Workers Union and at their instance the proceeding before the Registrar, Trade Unions was initiated.

In view of the reasons stated in the application, I.A. No. 903 of 2014 is allowed.

I.A. No. 891 of 2014

This application has been filed seeking intervention in the writ petition.

From the application it does not appear that the proposed intervenor was a party in the proceeding before the Registrar, Trade Unions.

I find no reason to entertain the present application and accordingly, it is

dismissed.

I.A. No. 1823 of 2014

This application has been filed seeking intervention in the writ petition.

From the application it does not appear that the proposed intervenors were party in the proceeding before the Registrar, Trade Unions and hence, this application is dismissed.

W.P.(C) No. 6869 of 2012

Seeking quashing of order dated 16.06.2012 whereby the respondent No. 2-Labour Commissioner-cum-Registrar, Trade Unions refused to enter the name of duly elected office bearers of the Tata Workers Union for the period of 2012-14 in Form-B register, the present writ petition has been filed.

2. Briefly stated, the facts leading to filing of the present writ petition are summarised thus;

The petitioner-Telco Workers Union is a Trade Union registered under the Trade Unions Act, 1926 which represents the cause of employees in Tata Engineering and Locomotive Company Limited (now Tata Motors Limited). The petitioner-Union has a registered constitution for election of the Executive Committee of the petitioner-Union. For the 2008-10 election, one A.K. Pandey filed a Writ Petition being W.P.(L) No. 556 of 2008 which was disposed of vide order dated 10.03.2008 by this Court granting liberty to the said A.K. Pandey to file a representation with respect to his grievance regarding proposed election. In the meantime, the said A.K. Pandey was discharged from service with effect from 26.08.2008. The said A.K. Pandey also filed a title suit bearing Title Suit No. 134 of 2008 in the Court of Munsif at Jamshedpur against the elected General Secretary, Treasurer etc. seeking a decree of permanent injunction restraining them from acting as members of Telco Workers Union. An injunction petition was also filed in Title Suit No. 134 of 2008 which was dismissed vide order dated 19.12.2009. In view of the order passed by this Court in W.P.(L) No. 556 of 2008, the respondent No. 2 passed an order dated 10.02.2010 that is, about more than 20 months after the direction issued by this Court. By order dated 10.02.2010, the respondent No. 2 refused to enter the name of office bearers in Form-B register and directed holding for fresh election. Aggrieved, the petitioner approached this Court in W.P.(C) No. 947 of 2010 which was allowed vide order dated 30.04.2010, quashing a part of order dated 10.02.2010 whereby, fresh elections were directed to be held within 40 days. In so far as, other disputes are concerned, this Court held that the same may be adjudicated in the pending civil suit. Thereafter, certain amendments in the constitution of the petitioner-Union were made which were approved in the General Body Meeting held on 07.11.2010. In the meantime, on certain complaints received by respondent No. 2, the proposed election on 01.11.2010 was stayed. The complainants led by the said A.K. Pandey and one Arun Kumar Singh raised objection to the procedure

adopted for formation of the Executive Committee. After receiving report from the Deputy Labour Commissioner, the respondent No. 2-Labour Commissioner-cum-Registrar, Trade Unions vide order dated 09.04.2011 held the amendments valid and ordered registration of the same. A further direction was issued for holding election in a free and fair manner. Thereafter, General Body Meeting was called on 21.04.2011 for finalising the rules and procedure for holding election of the Union in which no objection was raised and an unanimous decision was taken on 29.04.2011 for holding election for the year, 2011-14. Consequently, election was held on 14.05.2011 and a list of office bearers of Telco Workers Union was forwarded to respondent No. 2 for entering the same in Form-B register. In the meantime, vide communication dated 08.08.2011, the petitioner-Union was informed that in view of order dated 09.04.2011 passed by the respondent No. 2, the amendment adopted by the Union stood registered and a registered original copy of the same was sent to the petitioner-Union. Nonetheless, vide impugned order dated 16.06.2012, the respondent No. 2-Labour Commissioner-cum-Registrar, Trade Unions, Jharkhand held that the list of office bearers of the petitioner-Union cannot be entered in Form-B register. Aggrieved, the petitioner-Union has approached this Court by filing the present writ petition. 3. A counter-affidavit has been filed on behalf of the respondent Nos. 1 to 3 raising an objection to the maintainability of the writ petition on the ground that the election dispute raised for violation of the constitution of Union involves facts and materials which can be decided only in a civil suit. It is stated that in the course of hearing it emerged that the rules of election has been changed by the Executive Committee in violation of the constitution of Union and therefore, a legal opinion was sought from the Law Department. The learned Advocate-General opined that for making new rule and amendment in the existing Rules for conduct of election, approval of General Body is required. In view of the legal opinion, the respondent No. 2 refused to enter the name of elected office bearers in Form-B register.

4. Heard the learned counsel appearing for the parties.

5. The learned counsel appearing for the Intervenor-respondents submits that the term of the previous office bearers has already expired and process for holding new election has been initiated. Since, the issue involved in the present writ petition is a pure question of law, no counter-affidavit is required to be filed by the newly added parties.

6. Mr. K.N. Choubey, the learned Senior Counsel appearing for the petitioner-Union submits that in view of law laid down by this Court in *Singh R.N. and Another Vs. State of Bihar and Others*, , the issue is no longer res-integra and the Labour Commissioner-cum-Registrar, Trade Unions is under a duty to enter the name of elected office bearers in Form-B register. Referring to Sections 8 and 10 of the Trade Unions Act, 1926, the learned Senior Counsel contends that the power of the Registrar, Trade Unions is confined to grant of certificate of registration to a Trade Union and withdrawal or cancellation of the same. The

Registrar, Trade Unions has no jurisdiction to adjudicate inter-se dispute between the parties. Referring to order dated 09.04.2011 passed by the respondent No. 2-Labour Commissioner-cum-Registrar, Trade Unions, the learned Senior Counsel submits that the reason disclosed in the impugned order dated 16.06.2012 is erroneous in as much as, though vide order dated 09.04.2011, the respondent No. 2 issued order for registration of the amendment in constitution of the petitioner-Union which was adopted unanimously by the General Body, the respondent No. 2 has wrongly refused to enter the name of the elected office bearers in Form-B on the ground that election was held adopting a procedure based on the rules which has not been approved by the General Body.

7. Mr. Ajit Kumar, the learned A.A.G. appearing for the respondent-State of Jharkhand submits that the impugned order dated 16.06.2012 does not reflect an exercise of power by the respondent No. 2 rather, it only indicates the existing facts brought on record by the parties. It is further submitted that the petitioner submitted itself to the jurisdiction of respondent No. 2 and therefore, it cannot raise any grievance with respect to the impugned order dated 16.06.2012. The learned A.A.G. has further reiterated that the respondent No. 2 has not adjudicated the dispute between the parties however, in view of the dispute between the parties, the respondent No. 2 refused to enter the name of the alleged office bearers of petitioner-Union in Form-B register.

8. Mr. Ananda Sen, the learned counsel also raises objection to the maintainability of the writ petition and submits that there is a serious dispute with respect to validity of the election and therefore, the respondent No. 2 has rightly refused to enter the names in Form-B register.

9. In reply, the learned Senior Counsel for the petitioner-Union points out that a title suit being T.S. No. 109 of 2012 has been filed challenging the elections held for 2011-14.

10. I have carefully considered the submissions of the counsel for the parties and perused the documents on record.

11. In a catena of judgments, the Hon''ble Supreme Court has held that an order passed by a court without jurisdiction on the subject-matter is a coram non-judice. An order passed by such a court is a nullity and non est. In Kiran Singh and Others Vs. Chaman Paswan and Others, , the Hon''ble Supreme Court has held, "a defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties." The plea taken by the respondents that the petitioner has submitted itself to the jurisdiction of the Registrar, Trade Unions and therefore, it cannot challenge the jurisdiction, is liable to be rejected. If the Registrar, Trade Unions has no jurisdiction to decide inter-se dispute between the parties, the Registrar, Trade Unions was coram non-judice and the order passed by respondent No. 2 must be held nullity. In Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead)

through his Lrs., , it has been held thus;

"26.....A decree passed by a court without jurisdiction over the subject matter or on other grounds which goes to the root of its exercise or jurisdiction, lacks inherent jurisdiction. It is a coram non judge. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party....." 12. In Harshad Chiman Lal Modi Vs. DLF Universal and Another, , the Hon"ble Supreme Court explained the distinction between the jurisdiction as to subject-matter and territorial or pecuniary jurisdiction. It has been held thus;

"30. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity." 13. In Mantoo Sarkar Vs. Oriental Insurance Co. Ltd. and Others, , the law on the subject has been reiterated by the Hon"ble Supreme Court thus;

"20. A distinction, however must be made between a jurisdiction with regard to the subject-matter of the suit and that of territorial and pecuniary jurisdiction. Whereas in the case falling within the former category the judgment would be a nullity, in the latter it would not be." 14. Having noticed the effect of lack of jurisdiction of the court/authority, let us examine the power of the Registrar, Trade Unions under the Trade Union Act, 1926. The relevant provisions are extracted below:

"8. Registration - The Registrar, on being satisfied that the trade union has complied with all the requirements of this Act in regard to registration, shall register the trade union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration.

10. Cancellation of registration - A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar-

(a) on the application of the Trade Union to be verified in such manner as may be prescribed;

(b) if the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or that the Trade Union has ceased to exist or has wilfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision, or has rescinded any rule providing for any matter provision for which is required by section 6;

Provided that not less than two months" previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate shall be given by the Registrar to the Trade Union before the certificate is withdrawn or cancelled otherwise than on the application of the Trade Union." 15. In *Bokaro Steel Workers Union and Another Vs. The State of Bihar and Others*--> , examining the scope of power of the Registrar under the provisions of the Trade Union Act, 1926 a Division Bench of this Court held that there is no provision in the Act empowering the Registrar to exercise any superintendence and control over the internal affairs or day-to-day functioning of a Trade Union. The Division Bench finally concluded thus;

"22.(i) In a dispute between two rival factions claiming to be the office bearers of a union, it is open to the Registrar to hold an enquiry for the purpose of maintaining and up dating the register as required to be maintained under Section 8 of the Act.

(ii) His decision in this regard shall neither confer any right on any person or group or persons nor divest any person or group of persons of any lawful rights.

(iii) Consequently, the Registrar has no authority or power to issue any direction asking/advising the Labour Department of the Government of the employer to recognise and treat any particular person or group of persons as the duly elected office bearers of group of persons as the duly elected office bearers of the union in dealing with that union.

(iv) The Registrar, Trade Union has no authority or power to direct the holding of election of the bearers of a union under his own supervision or under the supervision of his nominee.

(v) In the absence of any provision in the Trade Union Act, any dispute of this kind can only be resolved by means of a suit filed before a Civil Court.

(vi) The adjudication in a suit at least in this State is normally a slow and time consuming process and does not constitute a wholly satisfactory remedy for resolving the dispute.

(vii) The legislature will, therefore, be well advised to address itself to this lacuna in the Trade Union Act and to take steps to remedy it to which has been long over due."

16. Another decision of Division Bench in "*R.N. Singh and Anr. Vs. State of Bihar*" (supra) has been referred by the learned Senior Counsel for the petitioner. In the said case, it has been held that, "under Section 8 of the Trade Union Act, 1926, the Registrar is required to register the Trade Union by entering in a register to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration." It has further been held, "where there is a dispute as to who are elected office bearers of a particular Union, it has been consistently held by this Court, and by other High Courts as well that it is not

within the jurisdiction of the Registrar of Trade Unions to determine which of the rival groups of office bearers is the real one. This is because under the Trade Union Act, 1926 there is no provision for adjudication of such disputes by any designated officer or authority. Obviously, therefore, when such disputes arise, they have to be resolved only by a civil suit in a court of competent jurisdiction."

17. From the scheme of Trade Unions Act, 1926 it is apparent that while granting registration the Registrar is required to examine whether the applicant has complied with all the requirements of the Trade Unions Act, 1926. Once the Registrar forms an opinion that the applicant-Trade Union satisfies all the requirements under the Act, the name of the Trade Union is required to be entered in the register and, a certificate under Section 9 is required to be issued in the prescribed form. Section 10 provides for cancellation or withdrawal of the certificate of the registration by the Registrar. From Section 10(1) of the Act, it appears that an objection can be raised by a rival Trade Union for withdrawal or cancellation of certificate of registration. In "R.G. D'Souza Vs. Poona Employees Union" [Civil Appeal No. 10129 of 2010], the Hon"ble Supreme Court has observed as under,

"15. As per Section 10 of the Act, the Certificate of Registration of a Trade Union may be withdrawn or cancelled by the Registrar of Trade Union either on application of a Trade Union inviting the attention of the Registrar of Trade Unions or the Registrar may suo mota take cognizance under the said section. There is no mention in the said provision about cancellation of Registration of Trade Union on application by any other person. The said section permits the Authority to cancel the registration of the Trade Union if, it is obtained by fraud or mistake, but does not permit the Authority to cancel the certificate of registration if, the same is granted by mistake due to incorrect assessment or non-application of mind or mechanical act on the part of the Authority." 18. It has further been held by the Hon"ble Supreme Court that even in cases where the Registrar either by mistake or due to incorrect assessment or non-application of mind has issued a certificate of registration to the Trade Union, the Registrar himself cannot nullify the same in exercise of power under Section 10 of the Act and such mistake can be rectified by the Appellate Authority or the Writ Court.

19. I do not find any provision in the Trade Unions Act, 1926 which confers a power on the Registrar, Trade Unions to adjudicate the inter-se dispute between the parties. From the impugned order dated 16.06.2012, it appears that the complaint alleging irregularity in conduct of election was entertained and the Deputy Labour Commissioner, Jamshedpur was directed to conduct enquiry and submit a report. It further appears that the Deputy Labour Commissioner recommended that a decision may be taken in accordance with the provisions of the Trade Unions Act. Thereafter, the respondent No. 2-Labour Commissioner-cum-Registrar Trade Unions heard the representative of Telco Workers Union and the other persons. The respondent No. 2 formed an opinion that the election was conducted on the basis of the rules which was adopted without approval of the

General Body and thus, it was contrary to the constitution of the Union. From the aforesaid, I find that the respondent No. 2-Labour Commissioner-cum-Registrar, Trade Unions entered into the merits of the dispute in so far as, the validity of election is concerned. As noticed above, the Registrar, Trade Unions has no jurisdiction to enter into such dispute and decide the inter-se dispute between the parties. Admittedly, a grievance with respect to irregularity committed in the election was not raised by a rival Trade Union rather, some individuals raised such disputes. I am of the opinion that the Registrar, Trade Unions has no power under the Act to entertain grievances of private members of the Trade Unions though, a complaint may become a source of information to the Registrar, for forming an opinion for issuing show-cause notice under Section 10 of the Act. In so far as, the subject-matter in impugned order dated 16.06.2012 is concerned, the respondent No. 2-Labour Commissioner-cum-Registrar Trade Unions, has no jurisdiction and accordingly, impugned order dated 16.06.2012 is liable to be quashed.

20. In the result, the writ petition is allowed and impugned order dated 16.06.2012 is quashed. Consequently, I.A. No. 2205 of 2014 stands disposed of.