
(2020) 09 JH CK 0094
In the Jharkhand High Court
Case No : Writ Petition (L) No. 3755 Of 2019

Vijay Kumar

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 02-09-2020

Acts Referred:

Trade Unions Act, 1926 — Section 8, 10, 28, 28(2), 29

Citation : (2020) 09 JH CK 0094

Hon'ble Judges : Dr. S.N. Pathak, J

Bench : Single Bench

Advocate : Indrajit Sinha, Ankit Vishal, Indrajit Sinha And Ankit Vishal

Final Decision : Disposed Of

Judgement

Dr. S.N. Pathak, J

1. In view of outbreak of COVID-19 pandemic, case has been taken up through Video Conferencing. Concerned lawyers have no objection with regard to the proceeding, which has been held through Video Conferencing today at 10:30 a.m. onwards. They have no complaint in respect to the audio and video clarity and quality.

2. The petitioner has approached this Court for quashing of the order dated 28.06.2019 whereby respondent No. 2, the Registrar, Trade Union has refused to register the name of the petitioner and his group as Office Bearers and Executive Committee members in Form 'B' register. Petitioner has further prayed for direction upon the respondent No. 2 to register the name of the petitioner and his group as Office Bearers and Executive Committee Members in Form 'B' Register.

Factual Matrix:

3. The factual exposition, as has been delineated in the writ petition is that the Timken India Limited is engaged in manufacturing of tapered roller bearing

situated at Jamshedpur. Its workmen have formed a Union namely "Timken Worker's Union", with whom wages and other terms and conditions of services are discussed. It is the case of the petitioner that election of Timken Worker's Union was held on 12.10.2018. However, when the Office bearers elected in the election held on 12.10.2018 failed to meet the demands of the workers for revision of wages in spite of 40-50 meetings with the management, a consensus was reached among the requisite number of members to bring a no confidence motion against the elected office bearers. It is further stated that as per Article IX of the Constitution and Rules of the Timken Worker's Union, 1/3rd of the total numbers of members of the Union can demand for holding a meeting with a clear agenda. In the instant case more than 1/3rd of total numbers of members i.e. 84 members of the Worker's Union vide letter dated 15.03.2019, informed the General Secretary, Timken Worker's Union about the long pending issue of revision of wages and demanded to call for a General Body Meeting of the members, for moving no confidence motion against the executive committee and to conduct fresh election of Executive Committee. It is further submitted that inspite of the said letter, the General Secretary of the Union did not called General Body Meeting. Therefore, the petitioner and his group vide notice dated 16.04.2019 called a General Body Meeting on 01.05.2019 with clear agenda of moving no confidence motion and election of new executive Committee. The meeting held on 01.05.2019 was attended by 136 members of Union and new office bearers and executive committee members were elected. In view of no confidence motion and election of the petitioner and his associates as new office bearers of the Trade Union, an application dated 20.05.2019 was made to the Registrar, Trade Unions for entering their names in the Form 'B' register. It is further case of the petitioner that the names of the Office bearers elected in the earlier election held on 12.10.2018 were not entered in Form 'B' by the Registrar, Trade Unions by that time. On receipt of application from the petitioner, the Registrar, Trade Union directed the Deputy Labour Commissioner to conduct an enquiry and submit report in response to which, the Deputy Labour Commissioner conducted the enquiry but in a perfunctory manner and without jurisdiction and submitted his report on 24.06.2019. On receipt of the said report, the respondent No. 2, Registrar, Trade Union passed order dated 28.06.2019, refusing to register the names of petitioner and his associates as Office Bearers and Executive Committee Members in Form 'B' Register on the ground that petitioner and his group does not have the required quorum of members for registration and further, the election was not conducted through secret ballot which was an essential condition as per the Constitution of Timken Worker's Union.

Aggrieved by the refusal of the Registrar, Trade Union to register the names of petitioner and his associates as Office Bearers and Executive Committee Members in Form 'B' Register, the petitioner has knocked the door of this Court.

Arguments advanced by learned counsel for the petitioner:

4. Assailing the impugned order, Mr. Indrajit Sinha, learned Counsel appearing for the petitioner vociferously argues that the entire dispute revolves around the action of the Registrar, Trade Union, who refused to enter the names of petitioner and his associates in Form 'B'. Learned counsel for the petitioner has challenged the impugned order mainly on the following grounds:

(I) Violation of Principle of Natural Justice:- Learned counsel submits that the enquiry report of the Dy. Labour Commissioner was never supplied to the petitioner, which amounts to violation of principles of natural justice, as the petitioner was never given any opportunity to raise any objection to the findings of the enquiry report.

(II) Delegation of powers:- On this point, learned counsel argues that function of the Registrar, Trade Union is statutory. Further, the Registrar was empowered to hold an enquiry for the purpose of maintaining and updating the registers required to be maintained under Section 8 of the Act. However, such power is limited and does not authorize the Registrar to adjudicate upon the dispute between the parties. In this context, learned counsel places heavy reliance on the judgment rendered by Hon'ble Patna High Court in case of Bokaro Steel Workers Union & Anr. Vs. State of Bihar & Ors., reported in 1995 (1) PLJR 400 and the judgment rendered by Hon'ble Jharkhand High Court in case of Telco Workers Union Vs. State of Jharkhand & Ors., reported in (2015) 2 JBCJ 278.

(III) Enquiry conducted by the Dy. Labour Commissioner is without jurisdiction and non est in the eyes of law:- It has been submitted by learned counsel for the petitioner that when the petitioner and his associates moved an application before the Registrar, Trade Union for registration of their names in Form 'B' Register, the Dy. Labour Commissioner, Jamshedpur was appointed as Enquiry Officer to ascertain the veracity of claim of the petitioner and his associates for registration in Form 'B'. In this regard, learned counsel submits that in the Scheme of the Act, the Dy. Labour Commissioner is a non-entity and the delegation is also bad for want of power to delegate under the Trade Unions Act.

(IV) By non-supply of copy of enquiry report, prejudice has been caused to the petitioner:- Learned counsel submits that the enquiry report submitted by Dy. Labour Commissioner, Jamshedpur was never supplied to the petitioner and his associates and thereby, they were denied the opportunity to file their objections to the enquiry report. This itself is sufficient to vitiate the entire proceedings.

5. For the aforesaid reasons, learned counsel submits that the action of the Registrar, Trade Union was completely without jurisdiction and the order refusing the claim of the petitioner was passed in complete violation of principle of natural justice and hence, the order is fit to be quashed and set aside and the names of the petitioner and his associates be directed to be entered in the Form 'B'.

6. To buttress his arguments, learned counsel for the petitioner places heavy reliance on the following judgments:

(I) Bokaro Steel Workers Union & Anr. Vs. State of Bihar & Ors. [(1995) 1 LLN 1079];

(II) Telco Workers Union Vs. State of Jharkhand & Ors. [(2015) 2 JBCJ 278]

(III) Gullapalli Nageswara Rao Vs. A.P. State Road Transport Corp. [AIR 1959 SC 308]

Arguments advanced by learned counsel for the respondent Nos. 1 to 3:

7. Mr. O.P. Tiwary, learned counsel appearing for respondent Nos. 1 to 3 justifying the impugned order argues that the election of the petitioner and his associates was not in accordance with law. Learned counsel further argues that respondent No. 3 in pursuance of letter dated 30.05.2019, held an enquiry in connection with the claim of the petitioner, wherein, it was found that the General Body Meeting was not called by sufficient number of members and as such the sanctity of said meeting itself was doubtful as not being in accordance with the bye-laws of the Union and the respondent No. 3 accordingly submitted his report to that effect. Learned counsel further submits that before submitting the report, respondent No. 3 provided sufficient opportunity to the petitioner as well as to respondent No. 4 to prove their bonafide claim, which was availed by them and thereafter, respondent No. 3 submitted his detailed report dated 24.06.2019. Based on the enquiry report submitted by the respondent No. 3, the respondent No. 2 vide his order dated 28.06.2019, refused to enter the names of petitioner and his associates in Form 'B' and hence, there is no illegality on part of respondent No. 2 and the order dated 28.06.2019 is fully justified.

Arguments advanced by learned senior counsel for the respondent No. 4:

8. Mr. Anil Kumar, learned Sr. Counsel appearing for the respondent opposes the contention of the learned Counsel for the petitioner and submits that the election was held on 12.10.18 and in the said election, the respondent No. 4 defeated the petitioner by 56 votes. Subsequently, on 25.10.18, an application was moved before the Registrar, Trade Union to register the names of the Executive Committee and Office Bearers in Form 'B' and vide order dated 28.06.2019, the names of the respondent No. 4 was registered in Form 'B'. Thereafter, after lapse of 7 months, petitioner has moved before the Registrar, Trade Union for registering the names of petitioner and his associates in Form 'B'. Learned senior counsel further argues that there are altogether 243 Members and as per Article IX of the Constitution, 1/3rd of the total number of members came to 81. Although, in the requisition of meeting dt. 15.03.2019 sent by petitioner, names of 84 persons are appearing, but the same does not appear to be correct as one Dilip Kumar having I.D. No. 978 has put his signature twice at Sl. No. 27 and 74. Further, Sl. No. 77 is missing as after Sl. No. 76, Sl. No. 78 has been written. Learned senior counsel further argues that there are several other anomalies in the said letter and hence, 7 members has fraudulently inserted their names and as such, after striking off their names, there will be only 77 members as against 81 members. Further, it is submitted that the decision taken by the Registrar

with regard to delegating the power to the Dy. Labour Commissioner for conducting enquiry is absolutely administrative in nature. Before entering the names of Office bearers in Form B Register, a limited enquiry is to be done and accordingly, the Deputy Labour Commissioner hold the enquiry after giving adequate opportunity of hearing to the petitioner which is absolutely legal and valid. To give dispute between two fractions of the Union a rest, the Registrar passed an order for limited enquiry which is an administrative decision and on the basis of enquiry report, finally entered the name of respondent No. 4 in the Form 'B'.

9. To strengthen his arguments, learned senior counsel for respondents places heavy reliance on the following judgments:

(I) Mukund Ram Tanti vrs. S.I. Raza Registrar, Trade [A.I.R. 1962 Pat 338];

(II) Rajendra Singh vrs. State of M.P. and Others [(1996) 5 SCC 406];

(III) State Bank of Patiala v. S.K. Sharma [(1996) 3 SCC 364];

(IV) Bar Council of India v. High Court of Kerala [(2004) 6 SCC 311].

Findings of the Court:

10. Be that as it may, after hearing counsel for the parties at length and from perusal of the documents brought on record and the judgments relied upon by the respective parties, this Court is of the opinion that the case of the petitioner needs consideration for the following facts and reasons:

(I) It is apparent from the impugned order that the entire disputes revolves around the action of the Registrar, Trade Union, who refused to enter the names of the petitioner and his associates in Form 'B'.

For better appreciation of the jurisdiction of the Registrar, Trade Union, it would be imperative to examine what exactly is Form 'B'

Section 8 of the Trade Unions Act, 1926 (hereinafter referred to as the Act) empowers the registrar to register a trade union by entering in the register, the particulars relating to the trade union contained in the statement accompanying the application for registration. The registered trade union has to furnish returns as have been mentioned in section 28 of the Act. Section 29 empowers the Appropriate Government to make regulations for the purposes of carrying into effect the provisions of the Act. The Appropriate Government so far as the employer herein is concerned is the State Government. In exercise of powers under section 29 of the Act, the erstwhile Government of Bihar had framed the Bihar and Orissa Trade Union Regulations, 1928 (herein after referred to as the Regulations), which is applicable to the State of Jharkhand.

Regulation 4 provides that the register of trade unions referred to in Section 8 shall be maintained in Form B, which has also been appended to the said regulations and from perusal thereof it would appear that details of the officers

of the trade union is to be mentioned. Section 28(2) of the Act mandates that a statement showing all changes of office bearers made by the trade union during the year to which the general statement refers must be filed by the Registrar. The purpose of filing such a return in terms of section 28(2) is to update Form B. The function of the Registrar, Trade Union is therefore statutory in nature.

The jurisdiction of the Registrar of Trade Unions vis-a-vis Form B is no more res integra. The Hon'ble Patna High Court in *Bokaro Steel Workers Union and Another v. State of Bihar and Others*, 1995-1 LLN 1079; has held as under:

"27. On an examination and analysis of the Patna decision *Mukund Ram Tanti* case (vide supra), the Allahabad, Andhra and Madras decisions, I come to the following conclusions:

(i) In a dispute between two rival factions claiming to be the office-bearers of a trade union, it is open to the Registrar to hold an enquiry for the purpose of maintaining and updating the registers 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 of 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 or the employer to recognize and treat any particular person or group of persons as duly elected office bearers of the union in dealing with that union.

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

(v) In absence of any provisions in the Trade Unions Act, 1926 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 Unions Act and to take steps to remedy it which has been long overdue."

This Hon'ble Court in *Telco Workers Union v. State of Jharkhand and Others*, (2015) 2 JBCJ 278, while deciding a similar issue, i.e. the refusal of the Registrar, Trade Union to enter the name of the petitioner union in Form-B register, allowed the writ petition observing that the Registrar had no authority to enter into the merits of the rival claim of the parties.

In the instant case both the Deputy Labour Commissioner and the Registrar entered into the correctness and legality of the no confidence motion and

consequent election of the petitioner by ostensibly testing them on the touchstone of the Constitution of the Trade Union, which is absolutely contrary to the legal position settled by the Hon'ble Court. In *Telco Workers Union* (supra) this Hon'ble Court held as under:

"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."

Further, the Hon'ble Supreme Court in case of *Gullapalli Nageswara Rao v. A.P. State Road Transport Corpn.*, AIR 1959 SC 308 while dealing with the issue regarding giving an opportunity of personal hearing before passing any order which affects the party concerned, has held under as under:

"31. The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides,

then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure."

[emphasis supplied]

(II) In view of the above principle of law, it is a clear case of "no hearing" and the judgment of the Hon'ble Supreme Court rendered in the case of *State Bank of Patiala v. S.K. Sharma*, (1996) 3 SCC 364 (para 33), relied upon by the Senior Counsel of the respondent no. 4 is actually in support of the petitioners and does not benefit the respondents as the Hon'ble Court held that in case of "no notice/no hearing" the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). The respondent no. 4 also relied upon the judgment of the Hon'ble Supreme Court rendered in case of *Rajendra Singh v. State of M.P. & Ors.*, (1996) 5 SCC 460 which is clearly inapplicable on facts. The issue raised in the instant case is not answered in negative or otherwise dealt with by the Apex Court in that judgment rendered in the case of *Rajendra Singh* (supra). Hearing by a person neither competent nor deciding the issue is "no hearing" in law and cannot be considered to be of any value.

(III) Further, from perusal of the enquiry report it appears that the Enquiry Officer i.e. Dy. Labour Commissioner, Jamshedpur had submitted his report dated 24.06.2019 to the Registrar, Trade Union with the following findings:

a) Article IX Clause I (1) mandates the requirement of 1/3rd numbers of general body of members for requisition meeting of general body of members. As per the report, the number of members required for requisition of meeting of general body were 81 (out of 243 members), however, only 79 members asked for requisition meeting which is short of mandatory requirement of 1/3rd members as 4 members who participated in the meeting held on 15.03.2019 called by the petitioner and his group also attended the meeting called by the rival faction of workers union on 17.03.2019, therefore the presence of these 4 members on 15.03.2019 is doubtful and further signature of one of the member was missing in the said requisition.

b) No information about the requisition meeting was ever received by the General Secretary, Timken Worker's Union and further the letter for requisition of meeting was not sent through speed post.

c) Election to the office bearers and members of the Executive Committee was not held as per Article V of the Constitution of Worker's Union which requires the election by secret ballot.

(IV) Upon the going through the aforesaid findings, it appears that petitioner and his group had requisite number of members i.e. 84 members out of 243, which is more than 1/3rd number of members, who asked for requisition of meeting for general body on 15.03.2019. The Deputy Labour Commissioner, Jamshedpur had wrongly presumed that the signatures of 4 members who participated in the

meeting dated 15.03.2019 for requisition meeting of general body of members are not genuine in absence of any evidence or material which refutes the said signatures. Further, there is no provision in the Constitution and Rules of Timken Worker's Union which raise such a presumption or which prohibits a member from attending meeting called by the rival faction. The above-mentioned 4 members of executive committee exercised their right for demand of meeting dated 15.03.2019 and the mere fact that they also attended the executive committee meeting called by the Timken Worker's Union on 17.03.2019 would not debar them from calling requisition meeting. Further, in support of the petitioner and his group, 115 members of the general body were present in the office of Deputy Labour Commissioner for verification which is also apparent from the finding of the Deputy Labour Commissioner at conclusive paragraph of the enquiry report dated 24.06.2019. Further, the finding that signature of one of the member was missing from the letter dated 15.03.2019, it is apparent that though ID Number of Satish Chandra was not mentioned in the letter dated 15.03.2019 due to an oversight but the said member attended the meeting on 21.06.2019 called by the Deputy Labour Commissioner, Jamshedpur in support of the petitioner and his group.

(V) It also appears that election to the post of Office Bearers and Members of the Executive Committee was uncontested and therefore, there was no requirement of voting by secret ballot neither any member had complained regarding the election.

11. From the rival submissions of the parties and the judgments relied upon, it is crystal clear that it was incumbent upon the Registrar, Trade Union to pass the order after complying the principle of natural justice. In the instant case, admittedly, the order dated 28.06.2019 is in complete violation of principle of natural justice and contrary to the binding precedents. The enquiry conducted by the Dy. Labour Commissioner is wholly without jurisdiction and is non est in the eyes of law. There is no cavil that the Registrar, Trade Union is a statutory authority and has to act within the four corners of the Statute. The Registrar, Trade Union has no inherent power or for that matter any power which is not conferred by the Act. He is an administrative authority under a statute and must function strictly in accordance with the same. Hence, it is crystal clear that the Registrar, Trade Union gravely erred in the matter of jurisdiction while directing the Deputy Labour Commissioner to conduct an enquiry and submit a report.

The Registrar was empowered to function under Sections 8 and 28 of the Trade Union Act and delegation of power is not permitted in view of the regulations. The initiation and continuance of the enquiry was an abuse of process of law and hence void ab initio. No credibility can be attached to the said proceedings and report lacks legal sanctity. Even the enquiry report was not supplied to the petitioner which caused prejudiced, as had an opportunity been giving to file objections, the petitioner could have demonstrated as to how the findings are bad and perverse.

12. As a sequitur to the aforesaid observations, rules, guidelines, legal propositions and judicial pronouncements, it is established beyond doubt that the Registrar, Trade Union has acted completely without jurisdiction and the order was passed in complete violation of cardinal principle of natural justice.

13. Resultantly, the impugned order dated 28.06.2019 is hereby quashed and set aside and the matter is remitted back to the Registrar, Trade Union to act in accordance with law and after giving ample opportunity of hearing to the parties, pass reasoned order, within a period of six weeks from the date of receipt/production of a copy of this order.

Needless to say, if it is found that election of the petitioner and his associates are genuine, following the rules and guidelines and as per the regulations, there names shall be entered in Form 'B' register.

14. With the aforesaid observations and directions, the writ petition stands disposed of.