

(1972) 09 MP CK 0004
Madhya Pradesh High Court
Case No: None

Ram Sahai Pandey

APPELLANT

Vs

State Industrial Court and
Another

RESPONDENT

Date of Decision: Sept. 6, 1972

Acts Referred:

- Constitution of India, 1950 - Article 226
- Trade Unions Act, 1926 - Section 27

Citation: (1973) 1 LLJ 553 : (1973) 18 MPLJ 320

Hon'ble Judges: Bishambhar Dayal, C.J; S.M.N. Raina, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Bishambhar Dayal, C.J.

This is a petition by Ram Sahai Pandey under Article 226 of the Constitution against an order passed by the State Industrial Court.

The facts which are not in dispute may shortly be stated. One Sabir AH was elected as president of the Rashtriya Mill Mazdoor Sangh (hereinafter referred to as the union). His election was challenged by respondent No. 2, Deoram before the Industrial Court u/s 28J of the Trade Unions Act, 1926, as amended in this State. During the pendency of those proceedings, Sabir Ali died and the present petitioner Ram Sahai claims to have been elected as president of the union on 25th April, 1971. By order dated 4th August, 1971 the Industrial Court held that the reference against Sabir Ali had abated as he had died and no further orders could be passed. Before this order of abatement was passed by the Industrial Court, the petitioner having been elected president, had applied to the Registrar of Trade Unions for registration of his name as the president. The Registrar was making an enquiry into this claim of

the petitioner. Respondent No. 2 then filed another application for reference before the Industrial Court challenging the election of the present petitioner on the ground that Sabir Ali not having been duly elected, no vacancy occurred after his death and the election of the present petitioner was, therefore, invalid. Along with this application he also applied for an interim order directing the Registrar not to proceed with the registration of the name of the present applicant. The Industrial Court passed an interim order on 20th September, 1971, and directed the Registrar not to make any entry till the proceedings before the Industrial Court were finally decided. The Industrial Court also gave an opportunity to the present petitioner to object to the order. The petitioner then moved an application before the Industrial Court for vacating the ex pane order and after hearing both the parties the Industrial Court passed the order dated 6th October, 1971, which is being challenged by this writ petition (Annexure "P" to the petition).

In this order dated 6th October, 1971, the Tribunal stated that the Tribunal had already made it clear in its order dated 20th September, 1971 that Deoram Jadav had a prima facie case and, therefore, it need not say anything further and that it also considered it unnecessary to issue any other direction to the Registrar with the result that the interim order which had been passed became the final interim order till the disposal of the proceedings. The Industrial Court also directed that the proceedings before it be accelerated, the intention being to finally dispose of the controversy as early as possible.

The contention of learned Counsel for the petitioner in this writ petition is that the Industrial Court had no power to pass an interim order. All that it can do is, after making an enquiry, to declare who is the properly elected president of the union. He relies upon the words of Section 28-J of the Trade Unions Act, as inserted by the Madhya Pradesh Amendment Act. Sub-section (2) of Section 28-J is as follows:

On a reference being made under Sub-section (1), the Industrial Court shall, after hearing the parties to such dispute and recording such evidence as it may consider necessary, decide the dispute and declare who is the lawful officer....

The contention of learned Counsel for the petitioner, therefore, is that the jurisdiction of the Industrial Court is merely declaratory and in such declaratory proceedings no interim order could be passed.

On the other hand, the contention of learned Counsel appearing for the respondent No. 2 is that the power of the Registrar to register the names of office bearers is subject to the declaration made by the Industrial Court u/s 28-J. The Industrial Court, therefore, is in effect exercising an appellate power and if the Industrial Court declares any person to be properly elected, the entry made by the Registrar must be altered. Where a dispute was pending before the Industrial Court as to who was the properly elected president of the union, it was within the jurisdiction of the Industrial Court to direct the Registrar not to make any entry while those

proceedings were pending, for if a person is entered in the register as the president he will obtain certain powers to act as representative of the union and he may thereby materially affect the rights of the members of the union. Irreparable damage may occur to the interests of the members of the union by anything that is done by a person who could not properly represent the union.

learned Counsel for the petitioner placed reliance on *K. Babudhom Singh v. H. Romonyaima Singh* AIR 1962 HP 18. All that was held in that case was that in a suit where the plaintiff claimed a mere declaration and also claimed to be in possession and the defendant denied the plaintiff's title and himself claimed to be in possession, it was not proper for the Court to grant any injunction restraining the defendant from interfering with the plaintiff's possession merely on the basis that the plaintiff had proved a prima facie case. That case is entirely different. Where the plaintiff files a suit for a mere declaration and seeks no further relief and during the pendency of the suit he asks for an interim relief which he could not get even if his whole suit is decreed, it has been held in several cases that such an interim relief cannot be granted by the Court. But that principle is very different from the one which is involved in the present case. Here no injunction is claimed against any party. All that is asked for is that a subordinate Tribunal, whose orders would be infructuous after the disposal of the proceedings before the Industrial Court, should stay the proceedings so that complications may not arise if the subordinate Tribunal passes a wrong order.

learned Counsel for the petitioner also relied upon a decision of this Court in *Kanhaiyalal v. The State of M. P. and Ors.* Miscellaneous Petition No. 387 of 1969 decided on 24th November, 1969. That was a case relating to the removal of a sarpanch under the Madhya Pradesh Panchayats Act. u/s 314 of the Act the State Government was authorized to examine the record of any proceeding under the Act and, after hearing the persons concerned, to pass such orders as it considered proper. Sub-section (2) of that section is very important and was as follows:

No order under Sub-section (1) shall be made to the prejudice of any party unless such party has had an opportunity of being heard.

What the Government did in that case was to pass an order ex parte staying the operation of the Collector's order during the pendency of the enquiry. The Collector had, in an enquiry u/s 27 of the Act removed the sarpanch on a complaint being made by several persons. The effect of the State Government's order was that the removal of the sarpanch came to an end by an ex parte order and he got the power to act as a sarpanch again. Since the Government was prohibited from acting as ex parte u/s 314 of the Act, it was held by this Court that the Government could not pass an ex parte order. It could pass an order only after hearing the parties. It was also held that any inherent power to pass interim orders could not be exercised by executive authorities and that such a power could be deemed vested only in regularly established Courts.

We are of opinion that the two cases cited above do not militate against the power of the Industrial Court which is a Court with judicial powers only in directing the Registrar not to proceed with the enquiry about making an entry in the register.

This matter is governed by the principle laid down by their Lordships of the Supreme Court in *I.T. Officer v. Mohd. Kunhi* AIR 1969 S.C. 430, . That was a case in which the Income Tax Appellate Tribunal had directed the stay of realization of the assessed tax and the contention was that the Appellate Tribunal had no authority to pass any stay order. After reviewing the relevant provisions of the Income Tax Act their Lordships observed in paragraph 4 of the judgment:

There can be no manner of doubt that by the provisions of the Act or the Income Tax Appellate Tribunal Rules, 1963 powers have not been expressly conferred upon the Appellate Tribunal to stay proceedings relating to the recovery of penalty or tax due from an assessee.

* * *

Indeed the Tribunal has been given very wide powers u/s 254(1) for it may pass such orders as it thinks fit after giving full hearing to both the parties to the appeal, If the Income Tax Officer and the Appellate Assistant Commissioner have made assessments or imposed penalties raising very larg? demands and if the Appellate Tribunal is entirely helpless in the matter of slay of recovery the entire purpose of the appeal can be defeated if ultimately the orders of the departmental authorities are set aside. It is difficult, to conceive that the Legislature shoul. 1 have left the entire matter to the administrative authorities to make such orders as they choose to pass in exercise of unfettered discretion.

* * *

It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective,

Their Lordships further observed paragraph 9:

It is needless to point out that the power of stay by the Tribunal is not likely to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws, It will only be when a strong prima facie case is trade out that the Tribunal will consider whether to stay The recovery proceedings and on what condition.

It would thus appear that the well establish principal has been recognized that a regularly established Tribunal has tin Authority to stay proceedings by the subordinate authorities in order to prevent irreparable mischief during the pendency of the proceedings before it. In the present case, the Industrial Court had

taken the precaution while passing the interim order to give an opportunity to the present petitioner to object to the interim order and after hearing both the parties when the Industrial Court found that there was no case made out for vacating the interim order it has passed the final interim order which is now in dispute.

The next contention of learned Counsel for the petitioner was that in the impugned order the Industrial Court has relied upon its observations in the previous interim order dated 20th September, 1971 to which the petitioner was not a party and the observations were made ex-parte in favour of the present respondent No. 2 which was wholly improper. The Court could have relied upon the evidence and affidavit that was filed before it with regard to the present stay application. We think that the contention of learned Counsel is correct and a reference to remarks made in the order dated 20th September, 1971 by the Industrial Court was not very apt. But when we look into the matter carefully, it only means that the Tribunal, instead of saying that respondent No. 2 according to the Tribunal is a prima facie case and, therefore, the entry of the name of any other person at that stage would not be proper, has stated so in terms of the old order. This is merely a wrong way of expression and that alone would not be sufficient for this Court to interfere with an interim order which neither decides the rights of the parties nor affects any substantial rights. The dispute is still pending before the Industrial Court and will be finally decided by it. The mere observation that a prima facie case exists, in favour of respondent No. 2 does not mean that the case will not be tried on merits according to the evidence before the Industrial Court.

This Court does not normally interfere with interim orders passed by Tribunals. But in this case the very authority of the Tribunal to pass any interim order was challenged and so the writ petition, was admitted. Having come to the conclusion that the Industrial Court had the power to pass an interim order, we do not consider it proper to interfere with that order and dismiss this writ petition. We, however, direct the parties to bear their own costs. The outstanding amount of the security deposit shall be refunded to the petitioner.