

(2002) 10 DEL CK 0071

Delhi High Court

Case No: IAs 5806, 6893 and 6894/01 in S. No. 1270 of 2001

Shri Maharaj Singh and Others

APPELLANT

Vs

Northeren Railwaymen"s Union
and Another

RESPONDENT

Date of Decision: Oct. 4, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A

Hon'ble Judges: Shamik Mukherjee, J

Bench: Single Bench

Advocate: Sandeep Sethi and Pawan Bindra, for the Appellant; Richa Kapur, for the Respondent

Judgement

S. Mukherjee, J.

IA No. 5806/2001 and IA. No. 6893/01 in S. No. 1270/2001.

1. This is an application for ad interim injunction under Order 39 Rule 1 and 2 CPC, praying for an order restraining the defendants 1 and 2 from declaring the result of election which has allegedly taken place on 9.6.2001. The alternative prayer in the event of results having already been declared, is to restrain the defendants from acting upon the same, or making any appointment to the post of office-bearers on the basis of the said "election".

2. The subject matter of the main suit for declaration, is the elections to the Tughlakabad Main Branch of the Defendant"s Union. It is sated that about 2600 members elect 64 delegates, who in turn elect the Executive Body which conducts the affairs of the Defendant"s Union.

3. The case of the plaintiff/applicant, is that the previous elections had been held on 26.12.96 and the term of office of two years, expired on 25.12.98. As such the process of next election, was to start about two months prior thereto, and

accordingly a notice dated 30.9.98 was published inviting nominations for the proposed elections.

4. The further case of the plaintiff is that the General Secretary of Defendant No. 1 issued a communication dated 14.12.1998, cancelling the earlier notice dated 30th September, 1998. Thereafter, a fresh notice was issued on 19.8.99 inviting objections to the electoral roll of the members of the preceding two years i.e. 1996-97. One again a fresh election notice dated 27.9.1999, was issued on the ground that the proceedings regarding the earlier election notice had been lost.

5. Pursuant to the election notice dated 27.9.99, elections were held and a list of 65 successful delegates was drawn up. This list according to the plaintiff constitutes the basis of the second tier level of the elections.

6. Further, according to plaintiff, the same notice had set out a schedule for the third tier also. Learned counsel for the plaintiff has drawn my attention to certain documents placed on record, including those at pages 27 to 32 of the plaintiff's documents, to show that under the signatures of Sh. S.Z.A. Zaffri, the elections had been scheduled for 27.11.99 at 12.00 hours, but the same were not held on that date and thereafter no notice has been received about any subsequent date being fixed for holding of elections

7. As such according to plaintiff, the stand of the defendant that results have been declared on 15.6.2001 in relation to an election held on 9.6.2001, is an instance of clear cut manipulation.

8. Rather, according to the plaintiff, some of the delegates may have held some secret/clandestine elections, but the same is neither valid nor lawful and as such, the interim stay order dated 15.6.2001 should be made absolute till the disposal of the suit.

9. Prayer has been made by way of subsequent application (IA No. 6893/2001) for stay of operation of the office order dated 15.6.2001.

10. Yet another application (IA No. 6894/2001) has been filed under Order 39 Rule 2A CPC alleging that the defendants have violated the ex parte ad-interim injunction dated 15.6.2001, in-as-much as they were served with the said injunction Along with all papers on that very day but still proceeded to notify the result in disobedience of the order dated 15.6.2001.

11. Reply to is No. 5806/2001 could not be located by me. However, the written statement of the defendant is there containing the detailed stand of the defendant.

12. In the said written statement, the defendant has taken the stand that Tughlakabad Main Branch of the defendant's Union, has been superseded by the General Secretary vide order dated 24.1.1999, having the implication that the earlier proceedings of elections were declared null and void.

13. According to the defendant, later on 20.4.2001, election notice was again issued and the list of members for the last three years was prepared from the record of the office.
14. It is pursuant to this notice dated 20.4.2001, that forms for nomination of delegates were issued on 21st May, 2001 and 22nd May, 2001 and only 50 members took the delegates' forms.
15. Detailed list of all those who took forms against signatures has been filed Along with the written statement. Certain forms were found to be incomplete viz in case of six members, and those were rejected. Out of balance 44 who remained, three persons withdrew their applications/nominations.
16. As such it is stated that the final list of delegates duly signed by the General Secretary was displayed on 2.6.2001, with the remarks that objections be given before 9.6.2001.
17. On 9.6.2001, it is contended that about 77 members of the Tughlakabad Main Branch of the defendant's Union came to the office at 11.00 hours and approved the election, as already notified. It is further submitted that the unanimously prepared list of office bearers amongst elected delegates was read out and objections were invited from the members present. Since no one objected, that list was treated as unanimously declared elected, and the results were thus declared on 9.6.2001.
18. During the arguments, learned counsel for the defendant submitted that none of the plaintiffs had paid membership charges and Therefore they are otherwise also ineligible. After the arguments were heard, the plaintiff filed Along with list of documents, receipts in relation to subscription paid for the period 2001-2002 and 2002-2003. I am Therefore proceeding, for interim application purposes, on the basis that plaintiffs are not disqualified/ineligible. After the arguments were heard, the plaintiff filed Along with list of documents, receipts in relation to subscription paid for the period 2001-2002 and 2002-2003. I am Therefore proceeding for interim application purposes, that plaintiffs are not disqualified/ineligible.
19. The main contention of the plaintiff by way of replication, and during arguments, was that once the election scheduled for 27.11.99 had been postponed, the election had to be held on whatever was the postponed date, from amongst the list of 65 delegates which had been drawn up for the said purpose.
20. It is further contended that even assuming that election notice was given on 20.4.2001, the same had to be in relation to the list of delegates already finalised, and no new election process could have been started without properly cancelling the earlier process.
21. Learned counsel for the defendant has placed strong reliance upon Clause 50 of the Constitution of the Defendant No. 1 Union which contains a mandatory

stipulation as under:-

"No member shall rush to the Court of Law on matters arising out of internal organisational disputes of the Union unless has complained or appealed to the Working Committee/Central Council of the Union through the General Secretary and he has received the judgment of the Working Committee/Central Council within three months of the submission of his appeal/complaint. The second appeal if preferred within 30 days after the judgment shall be decided by the Central General Body within six months of the date of its receipt. The complaint shall be allowed to be heard in person at this occasion if he had made specific request in this connection. Any member or members acting in contravention of this rule shall be deemed as suspended."

22. To my mind, in the case of a body like a Trade Union, the machinery for disputes" resolution existing within the body itself, has to be given utmost importance and members should not be encouraged to take their grievances to the Court, without first exhausting the internal mechanism which has been created by or under the Constitution of the Trade Union itself.

23. A perusal of the above said provision however indicates that there is no power conferred upon either the Working Committee, or the Central General Body for granting interim relief. Perhaps that is the reason why plaintiff have rushed to this Court.

24. Be that as it may, in view of the provision in the Constitution of the Trade Union, and the facts and circumstances of the case, it would be appropriate to relegate the plaintiffs to the proceedings as envisaged by Clause 15 of the Constitution of the Union.

25. For the said purpose, it is directed that the plaintiffs will lodge their complaint/appeal to the Working Committee/Central Council of the Union through the General Secretary within a period of two weeks from the date of this order.

26. The said Working Committee/Central Council will take a decision on the complaint/appeal within a period of four weeks thereafter and convey its decision with reasons to the plaintiff, after granting an effective opportunity of hearing to the plaintiffs/their representatives.

27. Against the said decision of the Working Committee/Central Council, the plaintiffs, if aggrieved, would be entitled to prefer second appeal within a period of thirty days of the communication of the order of the Working Committee/Central Council.

28. The second appeal will be decided after grant of opportunity of personal hearing to the plaintiffs/plaintiffs" representatives, by a reasoned order.

29. In case either of these bodies is having a large number of members assembling from different parts, then upon plaintiffs being given one week's notice, it will be the responsibility of the plaintiff to ensure that they avail personal hearing on the date fixed by the defendants.

30. The question which would still survive, would be regarding the interim orders to operate till the decision of the in-house forums under the Constitution of the defendant Union. I find that the plaintiffs have been able to make out a strong prima facie in their favor. The balance of convenience and irreparable hardship aspect is also in favor of plaintiff and against the defendant Union.

31. When the list of delegates had been finalised in September/October 1999, then even if the election was to be postponed, it was that list which had to form the basis of the election on the postponed date.

32. In case for any reason that list of delegates was to be held as inoperative, valid proceedings ought to have been held in that behalf after grant of hearing, or at-least intimation to all the persons who had acquired eligibility as delegates for the purpose of the said elections, and Therefore had acquired a right to participate in the second tier election process as on that date, which right was to continue till the elections were actually held, and they could not have been deprived of without following some manner of due process.

33. In these circumstances, it is directed that till the final decision is taken by the Working Committee or Central General Body, as the case may be, and for a further period of two weeks of communication of the said final order by registered post to the plaintiffs or their nominated representatives or to the counsel representing the plaintiffs before this Court, there will be a stay of operation of the elections purportedly held on 9th June, 2001.

34. Consequently the defendants shall stand restrained by this interim order from giving effect to the office order dated 15.6.2001 as issued by the Divisional Railway Manager, New Delhi. The applications is 5806/2001 and 6893/2001 are disposed of in the above terms.

35. The observations made above are limited to the context of the interim orders passed today.

is 6898/2001.

36. It would entail a long and pains-taking investigation to ascertain whether the order issued by the defendants was after the receipt of the ex parte injunction of this Court and/or that the order issued by the defendant have been ante-dated.

37. Moreover certain directions have been issued separately for consideration of in-house appeal and second appeal under Clause 15 of the Constitution of the Defendant Union.

38. In these circumstances I would not consider it expedient to continue further proceedings in relation to this application for contempt. The application is disposed of for the time being on the material as available on record presently, and keeping in view the proceedings directed to be taken under Clause 15 of the Constitution of the Defendant's Union.

39. In the course of the further proceedings, additional material may come up on record throwing further light on this aspect. In that eventuality, upon completion of the proceedings of appeal/second appeal under Clause 15 of the Union's Constitution, liberty is granted to plaintiffs/applicants to apply for revival of the contempt proceedings, in the eventuality of the revival of the same becoming warranted as a result of further material coming on record.

40. Application stands disposed of.

SUIT No. 1270/2001

List for directions on 28.10.2002.