

(2002) 10 DEL CK 0086

Delhi High Court

Case No: IA. No"s. 3512, 3513, 3842 and 6368/00 by Deft. No. 1 in S 725/00

Food Corporation of India
Worker"s Union

APPELLANT

Vs

Umesh Kumar Gupta

RESPONDENT

Date of Decision: Oct. 25, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 2
- Trade Unions Act, 1926 - Section 21, 21A

Citation: (2002) 101 DLT 390 : (2003) 66 DRJ 597 : (2003) 96 FLR 937 : (2003) 2 LLJ 123 :
(2003) 1 SLJ 162

Hon'ble Judges: Shamik Mukherjee, J

Bench: Single Bench

Advocate: Indira Jai Singh, Bharat Sangal, Rajeev Talwar, Sanjeeta Panickar, R.P. Kumar and S. Santanam, for the Appellant; Basudeva Prasad Sunil Goyal and Sumant Bhardwaj, for the Respondent

Judgement

S. Mukerjee, J.

IAs No. 3512/00, 3513/00, 3842/00 & 6368/00 by Deft. No. 1

1. There are four applications which arise for consideration. Three applications which arise for consideration. Three applications are filed by the plaintiff seeking ad-interim stay orders and the fourth is the application preferred by the defendant for rejection of the plaint on the ground that proceedings have been instituted (subsequently) in the Courts at Calcutta.

2. The factual background to be considered for the purposes of disposal of these two applications, fall in a narrow compass.

3. The defendant No.1 has been allegedly expelled from the membership of the plaintiff trade-union, vide resolution of the Executive Committee of the said Union,

dated 13.11.1999.

4. The said resolution, it is stated, has been passed under the Constitution of the Trade Union, and in particular, Clause 15 thereof (at page 76 of the documents file of this case) which Clause 15 stipulates as under:

Clause 15. Disciplinary procedures

Any member whether honorary or ordinary, acting in a manner prejudicial to the interest of the Union, will be liable to disciplinary action by the Executive Committee provided that no disciplinary action will be taken against a member unless he has been given a chance of hearing by the Executive Committee. Provided further that no member will be expelled from the Union unless such decision has been taken by the Executive Committee atleast by two third's majority."

5. The plaintiff Trade Union has a membership of about 64000, and even the Executive Committee, has a fairly large sized composition of almost 400 members.

6. The case of the plaintiff is that the show-case notice proposing the action of removal of the defendant No.1, both as an office bearer and as a member, on the grounds envisaged by Clause 15 of the Trade Unions's Constitution, had been duly served upon the defendant No.1.

7. It is the further case of the plaintiff that even though such a large body as the Executive Committee of 400 members, cannot keep meeting/assembling time and again, yet at defendant No.1's request, accommodation in relation to the first hearing dated 3.9.99 was allowed, and the hearing was rescheduled for 13.11.99.

8. For which, postponed date of hearing also, the defendant requested, by telegram, for once again rescheduling the same, which was declined and the decision taken for removing the defendant No.1 from the membership, as well as from the status of office-bearer by way of disciplinary action, on account of alleged activity acting in a manner prejudicial to the interest of the Trade Union.

9. This decision was communicated to the defendant No.1, on 8.12.99. The grievance of the plaintiff is that despite the above said decision taken by following the due process, and after grant of due opportunity to the defendant No.1, yet the said defendant No.1 is still masquerading as an office-bearer, and also is unauthorizedly holding onto an ambassador car belonging to and registered in the name of the plaintiff trade-union. He is also utilising the letter heads and stationary of the plaintiff Union, which defendant No.1 appears to have still kept with himself.

10. The arguments, including interjections in this matter, have been full of acrimony. From the same, as also from the pleadings of the parties, it is clear that only bitterness and difference of the view-point, is what is shared by him.

11. Apart from the defendant No.1 not accepting the decision taken by the Executive Committee, removing him from his position of office bearer and Member of the

Union, the said defendant No.1, it is submitted, has also, in his pleading and stands as taken at different places, shown extreme loyalty and allegiance to one Shri H.P. Singh MP, against whom the plaintiff union has obtained an injunction restraining the said Shri H.P. Singh from holding himself out as an office-bearer of the Union.

12. It is interesting to note that while Shri H.P. Singh himself has not adopted any proceedings, of the own, to challenge the action of removal taken by the plaintiff union against him, but the defendant No.1 has repeatedly, at different places in his pleadings taken a stand as if the said Shri H.P. Singh, continues to be the General Secretary of the Union.

13. In the submission of the learned Senior Counsel for the plaintiff, the defendant No.1 having been removed from the status of the office-bearer and member of the union, as such the following prayers should be granted by way of interim relief:-

(i) In I.A. No. 3512 of 2000, the defendant No.1 be directed to hand over the Ambassador Car No. DL 6CA 6252, which is owned by the Union and which defendant No.1 is continuing to unauthorizedly retain and use;

(ii) In I. A. No. 3513/2000, the Court Commissioner be appointed to seize and taken into custody the property of the Union which is illegally being retained in the custody by the defendant No.1;

(iii) In I.A. No. 3842 of 2000, an injunction be granted restraining the defendant No.1 from holding himself out as the office-bearer.

14. My attention has been drawn to a number of communications written on the official letter-head of the Union, containing a rubber stamp additional address, which happens to be the residential address of Shri H.P. Singh (who himself stands enjoined by virtue of an order of this Court which is continuing for quite sometime now),

15. Though these communications are not bearing the signatures of defendant No.1, however from the placing of the rubber stamp and using the address of the former General Secretary Shri H.P. Singh, it appears that what Shri H.P. Singh cannot do directly, on account of the injunction granted in his case, is sought to be done by the defendant No.1 acting in a malafide manner, to thereby indirectly give credence to, and to continue the perception of alleged lawful authority and capacity still vesting in the said Shri H.P. Singh.

16. Much has been said by both the parties. In my view, for the purposes of considering a prayer for grant of ad-interim relief, the Courts must confine themselves to the narrowest possible compass, for taking a prima facie view of the matter, so as not to comment upon the parties on the merits of their entire gamut of respective contentions, or render even a prima facie view on matters beyond the minimum extent required for the disposal of the interim applications.

17. To my mind, the crucial aspect in this matter, is that there is prima facie source of power available to the Executive Committee to remove the defendant No.1 from membership, in terms of Clause 15 of the Constitution of the Trade Union.
18. There is also adequate material to establish that due process has been followed, by way of issuing a detailed show cause notice upon the defendant No.1, and granting more than one opportunity to the defendant No.1 to avail personal hearing before the Executive Committee (notwithstanding the difficulty in arraign the assembling of this body repeatedly which has about 400 members coming from all over the country).
19. For reasons best known to him, the defendant No.1 did not appear on either of the two occasions.
20. Even during the arguments, no attempt was made to set up a case of any exceptional or over-riding difficulty.
21. In any case, once there is prima facie material to establish that the power existed, and also that the due process has been followed, atleast for interim purposes, it will not lie in the mouth of the persons such as defendant No.1, who is removed from both the membership of the Union and also from the position of officer-bearer, to contend that unilaterally he himself does not accept the action to be lawful or correct or just and that Therefore automatically he remains entitled to continue to exercise all powers and avail all benefits, as if the action of removal was non-est and/ or of no effect.
22. On one of the earlier dates of hearing, I had put it to Ld Counsel for the defendant No.1, as to how without participating in the proceedings, and thereafter without even bothering to file any substantive proceedings of his own for challenging the legality or validity or propriety of the decision of the Executive Committee, he could still be heard to contend that the said decision was not valid or was not liable to be acted upon.
23. Thereafter the defendant No.1 has filed a suit in the subordinate Court at West Bengal, where also it is the agreed position that he could not obtain any stay order, in relation to his grievance given in his own substantive proceedings.
24. The defendant No.1 then reportedly preferred an appeal before the District Court, where an order of status-quo was passed in his favor.
25. Against the order of the District Court, the plaintiff union preferred a revision petition before the Calcutta High Court, and thereupon the operation of the status quo order granted by the first appellate Court, was itself stayed.
26. Apart from that, I have been informed during the hearing by learned counsel for the plaintiff, that during the currency of the above order of the revision court, which was of operate up to 30.9.2002 when I reserved orders, the first Appellate Court

vacated the initial stay order itself, and as such the proceedings of this case are to proceed as if there is no stay order of any kind whatsoever in favor of the defendant No. 1 in the substantive proceedings adopted by him.

27. To my mind, the defendant No.1 having resorted to his own substantive proceedings, and having failed to obtain a stay order in his favor in those proceedings, can Therefore have no defense to the interim reliefs prayed for by the plaintiff, which are, in sum and substance, in the nature of a prayer for stay to restrain the defendant No.1 from adopting or availing or exploiting the status and facilities of an officer-bearer or member of the plaintiff Union.

28. In addition to this, there is the other aspect referred to above viz. that once power to take action exists, and there has been adherence to due procedure and compliance with principles of natural justice, then for prima facie purposes, the defendant No.1 will be liable to be restrained in any manner holding himself out to be the office-bearer of the Union and/or from possessing or using the property of the Union including its stationary, vehicle etc.

29. Another over-riding consideration which is to operate, is that there being bitter differences between the parties, it would not be expedient to permit the defendant No.1 either directly to indirectly to use the stationary and/or the properties of the Union. By way of elucidation, I only refer to an example which I had put to Ld. Counsel for the defendant No.1 as to who would be responsible, in the event of any defamatory or contemptuous communication being issued by Respondent No.1 holding himself out as the office bearer of plaintiff Union on the letter head of the Union, and/or in purported capacity of an office bearer of the Union.

30. Similar would be the position regarding any admission of liability or any communication entailing financial or legal consequences, which may be issued by respondent No.1.

31. At the fag end of the proceedings, the Ld. Senior Counsel for the Defendant abruptly handed over an order dated 23.9.2002 (viz. an order passed just few days back), at the instance of some members, in which the ex-parte ad-interim stay order has ben granted in relation to all the decisions taken by the office bearers of the defendant No.1, who have been elected after 11.4.98. In other words, by an exparte ad interim order of ad-interim injunction, at the instance of some employees who are the members of the Union, the position prevailing since more than last four years, has been made in-operative and everything subsequent thereto, has been indirectly stayed.

32. It appears that since the defendant No.1's own substantive proceedings, did not achieve the desired result, and as the injunction granted by the first appellate court was stayed by the revision Court, and thereafter the first appellate Court itself vacated the stay order with the result that the defendant No.1 was relegated the same position as of no stay in his favor at all after knocking the hierarchy of three

Courts, thereafter now a suit in the nature of proxy litigation, has been got filed, by a few members before the Civil Judge (Senior Division) at Alipur, in Title Suti No. 187 of 2002, and from the types of relief argued for and obtained, it is apparent that the said proceedings, or atleast the order of ex parte ad-interim injunction passed therein was meant to ensure for the benefit of the defendant.

33. What is most disquieting is the fact that a Civil Judge (Senior Division) aware of the proceedings pending before this High Court, has still proceeded to grant ex-parte ad-interim injunction, and to entertain an argument describing the previously instituted suit pending before a High Court, to be a "frivolous suit".

34. I say no more on this aspect even though during the proceedings, it came up for consideration that the proxy case before the Civil Judge (Senior Division), as reflected from the communication of the Counsel writing on the letter-head of Alipur Bar Association, reeks of impropriety, it not contempt.

35. Apart from the referring to the substantial proceedings pending in the Calcutta Courts, which as stated earlier, were filed only after the said aspect of non-challenge was pointed out during the previous hearings of this case, and that too much after the institution of this suit, wherein admittedly there is no stay surviving in favor of defendant No.1, the Ld Senior Counsel for the defendant No.1 referred my attention to Section 21 of the Trade Union Act, to contend that action cannot be taken against the office bearer.

36. Section 21A of the Trade Union Act reads a under:

"21A. Disqualifications of office-bearers of Trade Unions-

(1) A person shall be disqualified from being chosen as and for being, a member of the executive or any other office-bearer of a registered Trade Union if-

(i) He has not attained the age of eighteen years;

(ii) He has been convicted by a Court in India of any offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release.

(2) Any member of the executive or other office-bearer of a registered Trade Union who, before commencement of the India Trade Unions (Amendment) Act 1964, has been convicted of any offence involving moral turpitude and sentenced to imprisonment, shall on the date of such commencement cease to be such member or office-bearer unless a period of five years has elapsed since his release before that date.

(3)....."

37. As a perusal of the above statutory provisions will reveal, it is only a provision laying down the inherent ineligibility for being considered as such, or from

continuing as an office bearer. However such ineligibility is different from and regardless of the internal developments or circumstances prevailing within the Trade Union, such as expulsion as is the case in the present suit. Therefore Section 21A, has no relevance.

38. Moreover similar provision is there regarding the Directors of companies, or office bearers of so many other bodies/authorities. However, this provision will apply only if a person is removed on the ground of specified disability, and not where expulsion is on a factual allegations of the conduct of an individual being prejudicial to the interests of the Union, which eventually will be governed by Clause 15 of Constitution of the plaintiff Trade Union.

39. In these circumstances the application of defendant No.1 under Order VII Rule II is dismissed since the filing of subsequent suit at Calcutta will not be a ground for return/rejection of the plaint in this case. There is also no other valid ground for invoking Order VII Rule II CPC. No bar under law, has been made out. Since part of the cause of action has arisen at Delhi, there is no substance in the averments regarding absence of territorial jurisdiction. No cognizance under this provision can be taken of those defenses which are on merits, and not based on the admitted averments in the plaint.

40. The prayers made in the three applications filed by the plaintiff Union, are all liable to be allowed for the reasons detailed above and since all the three ingredients for ad-interim injunction, are found to be in favor of the plaintiff and against the defendant No.1, and the defendant No.1 shall stand enjoined from holding himself out as the office bearer of the plaintiff Union, and also from using the Ambassador Car No. DL6-CA-6256 of the plaintiff Union, or the Union's stationary, or any other property of the plaintiff Union. Shri Parvinder Chauhan Advocate, Lawyers" Chamber No. 430-431, Delhi High Court, New Delhi is appointed as the Commissioner to prepare an inventory of the stationary and office material including letter-heads, stamps etc. lying at the office residence of defendant No.1, and to take over the same, Along with Ambassador Car No. DL6-CA-6252 and hand-over the same on superdari to Shri S.K. Sharma, the General Secretary of the plaintiff Union. His fee is fixed as Rs. 10,000/- to be paid by the plaintiff Union. The interim orders will continue till final disposal of the suit.

41. The Defendant No.1 is directed to cooperate fully in the above process and to hand-over the entire above said material by ensuring that no part thereof remains with the Defendant No.1 or for his use or for the use of anyone else either through or with the help of defendant No.1.

42. The Local Commissioner will be entitled to avail the assistance of the police who, on his request, will extend adequate police assistance. Copy of this order be made available dusty to learned counsel for parties and to the learned Local Commissioner.