

Amalesh Kumar and Anr Vs. Labour

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Court : Jharkhand

Decided On : Aug-04-2017

Appellant : Amalesh Kumar and Anr

Respondent : Labour

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(C) No.3322 of 2017 with W.P.(C) No.3628 of 2017 ----- 1. Amalesh Kumar.

2. Prakash Kumar. . Petitioners. [In W.P.(C) No.3322/2017] 1. Dharni Dhar Mohanty.

2. Santosh Kumar Jaiswal.

3. Amit Kumar Shukla.

4. Santosh Kumar.

5. Manoj Kumar Singh.

6. A. Chalpat Ray.

7. Nirmala Jha.

8. Purna Chandra Mahto.

9. Menjo.
10. Budheshwar Das.
11. Bharti Rani.
12. Ashok Kumar Singh.
13. Jay Kumar Jha.
14. Subhash Kumar Rai.
15. Ram Naresh Singh.
16. Mathias Kujur.
17. Pradip Kumar Singh.
18. Rakesh Roshan.
19. Amal Kuamar Singh.
20. Jitendra Kumar Singh.
21. Shantanu Kumar Pushti.
22. Lavi Sharma.
23. Kakali Mandal.
24. Ashok Kumar Mishra.
25. Jitendra Kumar Saha.
26. Ashok Hemrom.
27. Prem Kumar.
28. Kafeel Ahmad.

29. Som Bahadur.
30. Dharmendra Kumar Singh.
31. Abhay Kumar.
32. Ravi Kumar Jaiswal.
33. Chandrashekhar Kumar.
34. Shashi Kant Singh.
35. Awadhesh Kumar Bhagat.
36. Shashi Bhushan Prasad.
37. Dilip Kumar Jha.
38. Shamsheer Khan.
39. Subodh Kumar Singh.
40. Umesh Singh.
41. Sanjeev Ranjan.
42. Satish Kumar Mishra.
43. Navin Kumar.
44. Kanhaiya Kumar.
45. Aronav Bhadra.
46. Rakesh Kumar Tiwari.
47. Md. Liyakat Ali.
48. Ali Raza. 2 49. Chodo Ho. . Petitioners. [In W.P.(C) No.3628/2017] -Versus- 1. The State of Jharkhand, through Secretary, Department of Labour, Government of

Jharkhand, Office at Nepal House, Doranda, Ranchi.

2. Labour Commissioner-cum-Registrar, Trade Unions, Government of Jharkhand, office at Doranda, Ranchi.

3. Deputy Labour Commissioner, Jamshedpur, office at Agrico, Jamshedpur.

4. Telco Workers' Union, a registered trade union, registered under the Trade Union Act, 1928, having Registration No.98 and its office at Hans Stoehr Road, Telco, Jamshedpur.

5. Ajay Bhagat, President, Telco Workers' Union, at Hans Stoehr Road, Telco, P.O. & P.S. Telco, Jamshedpur.

6. Gurmit Singh, General Secretary, Telco workers' Union, at Hans Stoehr Road, Telco, Jamshedpur.

7. Prakash Kumar Vishwakarma, Working President, Telco Workers' Union, at Hans Stoehr Road, Telco, Jamshedpur.

8. Vijay Kumar Singh, Vice President, Telco Workers' Union, at Hans Stoehr Road, Telco, Jamshedpur.

9. Hardip Singh Saini, Treasurer, Telco Workers' Union, at Hans Stoehr Road, Telco, Jamshedpur. 10. Manoj Kumar, Committee Member, Telco Workers' Union,

at Hans Stoehr Road, Telco, Jamshedpur. 11. Devjit Sarkar, Committee Member, Telco Workers' Union, at Hans Stoehr Road, Telco, Jamshedpur. 12. Vijay

Bhushan Mishra, Committee Member, Telco Workers' Union, at Hans Stoehr Road, Telco, Jamshedpur. 13. Sarvjeet Singh, Committee Member, Telco Workers'

Union, at Hans Stoehr Road, Telco, Jamshedpur. 14. Amit Kumar Giri, Committee Member, Telco Workers' Union, at Hans Stoehr Road, Telco, Jamshedpur. 15. Tata Motors Limited, represented through the Managing Director, Office at

Telco, Jamshedpur. Respondents. [In W.P.(C) No.3322/2017] 1. The State of Jharkhand, through Secretary, Department of Labour, Government of Jharkhand,

Office at Nepal House, Doranda, Ranchi.

2. Labour Commissioner-cum-Registrar, Trade Union, Government of Jharkhand, Doranda, Ranchi.
3. The Deputy Labour Commissioner, Jamshedpur.
4. Ajaya Bhagat, President, Telco Workers' Union, at Hans Stoehr Road, Telco, Jamshedpur.
5. Gurmit Singh, General Secretary, Telco Workers' Union, at Hans Stoehr Road, Telco, Jamshedpur.
6. Prakash Kumar Vishwakarma, Working President, Telco Workers' Union, at Hans Stoehr Road, Telco, Jamshedpur.
7. Vijay Kumar Singh, Vice President, Telco Workers' Union, at Hans Stoehr Road, Telco, Jamshedpur.
8. Hardip Singh Saini, Treasurer, Telco Workers' Union, at 3 Hans Stoehr Road, Telco, Jamshedpur.
9. Anand Prasad, Committee Member, Telco Workers' Union, at Hans Stoehr Road, Telco, Jamshedpur. 10.Lalan Prasad Singh, Committee Member, Telco Workers' Union, at Hans Stoehr Road, Telco, Jamshedpur. 11.Daljeet Singh, Committee Member, Telco Workers' Union, at Hans Stoehr Road, Telco, Jamshedpur. 12.Pradeep Rajwar, Committee Member, Telco Workers' Union, at Hans Stoehr Road, Telco, Jamshedpur. 13.Manoj Kumar, Committee Member, Telco Workers' Union, at Hans Stoehr Road, Telco, Jamshedpur. 14.Devjit Sarkar, Committee Member, Telco Workers' Union, at Hans Stoehr Road, Telco, Jamshedpur. 15.Vijay Bhushan Mishra, Committee Member, Telco Workers' Union, at Hans Stoehr Road, Telco, Jamshedpur. 16.Sarvjeet Singh, Committee Member, Telco Workers' Union, at Hans Stoehr Road, Telco, Jamshedpur. 17.Amit Kumar Giri, Committee Member, Telco Workers' Union, at Hans Stoehr Road, Telco, Jamshedpur. 18.Telco Workers Union (Registration No.98), having its registered office at Hans Stoehr Road, Telco, Jamshedpur. Respondents. [In W.P.(C) No.3628/2017 ----- CORAM : HONBLE MR. JUSTICE RAJESH SHANKAR ----- For the Petitioners M/s. Rajiv Ranjan, Sr. Advocate Manish

Kumar and Sachi Nandan Das, Advocates. For the Respondent Nos.1-4 Mr. L.C.N. Sahdeo, G.P. IV For the Respondent No.5 Mr. P.A.S. Pati, Advocate For the Respondent No.6 Mr. Rahul Gupta, Advocate For the Respondent Nos.7-11 Mr. Anoop Kumar Mehta, Mr. Vijay Kant Dubey, Advocates For the Respondent No.12-13 M/s.Anil Kumar Sinha Sr. Adv. Mr. Abhishek Kumar Sinha, Adv. For the Respondent No.15 M/s V. P. Singh, Sr. Advocate Arun Kumar Singh, Amit Kumar Das, Ms. Rashmi Kumar ----- CAV On 25.07.2017 Pronounced On 04.08.2017 Rajesh Shakar, J.: Both these writ petitions have been filed for quashing the order passed by the respondent no.2 as contained in Memo No.2/T2-10-03/17 Shra.Ni.1335 dated 13.06.2017, whereby the application of the respondent no.10 to 14 dated 28.12.2016 for inserting the name of newly elected office bearers of the Telco Workers Union in Form-B register has been allowed and the name of the petitioners have been deleted from the Executive Committee of Telco 4 Workers Union.

2. Since the issues involved in these writ petitions are similar, the same are being heard together and decided by this common judgment. However, W.P. (L) No. 3322 of 2017 is taken as leading case, the petitioners of which are directly affected by the impugned order.

3. The factual background of the case as stated in W.P. (L) No. 3322 of 2017 is that the petitioners were elected as President and Secretary in the Telco Workers Union by virtue of an election conducted in 2016 and thereafter, the list of successful candidates were sent to the Labour Commissioner- cum-Registrar, Trade Unions which was duly entered in Form- B on 21.01.2016. Thereafter, 30 members of the Executive Committee demanded for taking disciplinary action against the earlier President of the Union namely Gurmit Singh whereupon a show cause notice was issued to him on 29.10.2016 and he was suspended from the post of President as well as primary membership of the Union. Thereafter, the members of the Executive Committee also complained against 15 committee members and after a meeting of Executive Committee they were also given show cause notice. Finally, said Gurmit Singh and 15 other members were expelled from the membership and the decision was also approved by the General Body on 30.11.2016. An information to that effect was given to the Registrar, Trade Unions

(respondent No.

2) on 02.01.2017 requesting for deletion of their name in Form-B register. Other faction of the Union led by the respondent No. 6 took parallel actions against the petitioners also. A requisition was made by 40 member of the Executive Committee on 12.10.2016 for convening a meeting relating to negotiation with the Management of Tata Motors Ltd. for Grade Revision and also for issuing show cause notice to the petitioners and thereafter a meeting was called on 16.11.2016 wherein the petitioners were expelled from the prime membership of the Union for three years. Vide notice dt. 22.11.2016, a meeting of the Executive Committee was convened on 24.11.2016 and finally the decision was also approved by the General Body on 11.12.2016. Thereafter, a 5 letter was sent on 28.12.2016 to the Respondent No. 2 for making necessary changes in the Form-B Register. The petitioner no. 2, on 25.11.2016 informed the Respondent No. 2 about the illegal activities of Gurmit Singh, thereupon, the Respondent No. 3 was asked to conduct inquiry and submit report which was subsequently submitted, on the basis of which, the Respondent No. 2 vide an order contained in Memo No. 2/T2-10-03/17 Shra. Ni. 1335 dt. 13.06.2017 removed the name of the petitioners and further added the names of newly elected members in the From-B Register.

4. The learned Senior Counsel appearing for the petitioners has assailed the impugned order on the ground that the respondent no. 2 had no power under the law to adjudicate the dispute between rival factions of the Union. It is further submitted that the impugned order dt. 13.06.2017 has been passed in violation of the principle of natural justice as the petitioners were not supplied the enquiry report submitted by the respondent no.

3. As per the Bye Laws of the Trade Union, an extraordinary meeting can only be called for discussing specific agenda and as the removal of the petitioners was not in the agenda, a decision for their removal could not be taken. Learned senior counsel further submits that the signatures on the minutes of the meeting are duplicate, forged and the persons who allegedly signed have also sworn affidavit that they have not signed it. It is further submitted that the meeting was convened within 2 days of the notice which was not permissible in the bye laws for electing

office bearers; rather it can be done by the executive committee in the very first meeting held after elections and not otherwise. It is also submitted that the General Body Meeting of other faction authorizing the executive committee to hold bye election is also not permissible under the Bye Laws of the Union. The respondent no. 3 did not conduct inquiry in proper manner as he, without verifying the fact, came to the conclusion that 86 members did not participate in the General Body meeting held on 30.11.2016. Learned counsel further submits that in the minutes of the alleged General Body meeting of the other faction, many persons 6 have signed twice, thrice and even four times and also some non-members have participated in the alleged General Body Meeting and as such all the decisions taken in the said General Body meeting are illegal. In support of the above factual contentions, the petitioners have filed several documents in the supplementary affidavit dt. 06.07.2017.

5. Learned senior counsel, in support of the above contentions put reliance on the following judgments:- i. Bokaro Steel Workers Union and Anr. Vs. State of Bihar & Ors., reported in 1995(1) PLJR400 ii. Sri R. N. Singh & Anr. Vs. State of Bihar & Ors., reported in 1998(1) PLJR730 iii. Telco Workers Union Vs. State of Jharkhand & Ors., reported in 2015(2) JBCJ278 6. The learned counsel for the respondent no. 2 and 3 while justifying the impugned order submits that the petitioners were expelled from the membership of the Union after making a detailed enquiry and also after giving ample opportunities to the parties. The enquiry report submitted by the respondent no. 3 goes to show that the petitioners did not hold any general body meeting on 30.11.2016, rather the persons purported to have attended the meeting were attending their duties at that time which has been proved from the attendance report of the company.

7. The learned senior counsel appearing on behalf of the respondent no. 12 and 13 states that the issue involved in this case is that of election of the trade union and as such the dispute is not amenable under writ jurisdiction as there appears several disputed question of facts. Any dispute relating to the election of the trade union can be raised before an appropriate Civil Court. Learned senior counsel further submits that it is a matter of no confidence motion against the petitioners, who due to their own fight were showing reluctance in taking care of the interest of

the members of the Union. Though, the enquiry report has been filed along with the counter affidavit of the State respondents, yet the 7 petitioners have not challenged the same and on that ground also, the writ petition is not maintainable. It is further submitted that the wage revision of the employees is pending for the period 2016-19 due to the quarrel between the petitioners and as such 40 members of the Executive Committee requisitioned for convening meeting but the petitioner no. 2 refused to accept the notice. When the working President (respondent no.

6) also requested for calling of meeting, he was expelled. Learned Sr. Counsel further submits that Article IV and VIII of the Constitution of Telco Workers Union lay down the manner in which the office bearer may be terminated. The requisition meeting was held on 16.11.2016 and as per the decision taken in the requisition meeting, general body meeting was held on 11.12.2016 and five members were authorized to make an application to the Registrar, Trade Unions for entering the name of newly elected members in Form-B Register. It is further submitted that no general body meeting was held on 30.11.2016 as alleged by the petitioners and in support of the contention the statements of 77 executive members out of 96 executive members have been filed as Annexure-A to the Supplementary Counter Affidavit dt. 17.07.2017 of respondent nos. 12 and 13. It is further submitted that the respondent no. 2 had authority to make inquiry in a dispute between two rival factions for the purpose of maintaining Form-B register required to be maintained under section 8 of the Trade Union Act, 1926. It is also submitted that the words and other documents mentioned in Section 28 (4) of the Act has to be given wider meaning so as to meet the purpose of Section 28 of the Act.

8. The senior counsel relied upon the following judgments:- i. Bokaro Steel Workers Union and another Vs. State of Bihar and others reported in 1995 (1) PLJR400 ii. Mukund Ram Tanti Vs. S.I. Raza, Registrar, Trade Unions Bihar Patna and Others reported in AIR1962(Pat) 338. 8 9. The learned Senior counsel appearing on behalf of the respondent no. 5 and 6 submits that although the petitioners have claimed that they had called a General Body meeting on 30.11.2016 but during the course of inquiry it was found that out of 416 members claimed to be present on that day, 100 members were on duty. Even if it is

assumed that any general body meeting was called, the quorum of meeting i.e 10% of the total members were not fulfilled and as such the same was not competent to pass any resolution. It is further submitted that the petitioners have raised election dispute which is not maintainable in the writ jurisdiction. It is further submitted that stand of the petitioner that in the general body meeting dt.11.12.2016 some non-members also participated is a disputed question of fact that cannot be raised before the writ court. It is further submitted that the enquiry conducted by the Registrar was only for the purpose of prima facie satisfaction with regard to entering the names of the elected members of the Union in Form-B Register.

10. The learned Sr. Counsel appearing on behalf of the Tata Motors (respondent no.

15) submits that the Management has no direct concern with the inter-se dispute of the members of the Workmen. However, he further submits that the Management may be allowed to negotiate the wage agreement with the recognized office bearers of the trade union as in the other plants, the same has already been executed. Learned Sr. Counsel further submits that any dispute relating to inclusion of any name in Form-B register is required to be adjudicated by filing a regular suit in the Civil Court of competent jurisdiction.

11. The learned counsel appearing on behalf of the respondent no. 7 to 11 submits that the wage revision of the workers is pending since last year and as such a general body meeting was held on 11.12.2016 wherein about 90% of the workers attended. In the general body meeting, new set of office bearers were elected and as such the order of the Registrar, Trade Unions cannot be faulted with.

12. The learned Sr. counsel appearing for the petitioners in rejoinder argument submits that the alleged fight between 9 the petitioners has been concocted by the private respondents. In fact, in the said scuffle, several persons from the respondents' side were also involved, however, now the dispute has been resolved and the petitioners are jointly pursuing the matter of wage revision and Bonus Agreement in the interest of the members of the Union. It is also submitted

that the requisition for meeting was never supplied to the petitioner no. 2 as has been alleged by the private respondents.

13. Heard the learned counsel for the parties and perused the materials available on record. The issues for determination before this court are as follows:- 1. Whether the Labour Commissioner-cum- Registrar Trade Union, while passing the impugned order, has exceeded its jurisdiction conferred under the Trade Unions Act, 1926? 2. Whether the dispute raised by the parties can be adjudicated in the writ jurisdiction.

3. If the answer to the second question is negative than what relief can be granted to secure the ends of justice? Re- Issue No. 1 14. From the facts of the case it appears that there are two factions in the Telco Workers Union, One is represented by the petitioners who are claiming that they have been elected in 2016 election and other is represented by one Gurmit Singh (respondent no. 6 herein). Both the factions initiated parallel proceedings against each other and are claiming to be the real office bearers. It further appears that the petitioners and the private respondents have put forth their rival claims. The petitioners are claiming that after requisition of the members of the executive committee, Gurmit Singh (respondent no.

6) and 15 others were expelled and the decision was approved by General Body and the information was given to the respondent no. 2 for deleting the name of Gurmit Singh and 15 other members from Form-B register. On the other hand, the private respondents have claimed that after requisition of 40 executive members, a meeting was convened in which the petitioners were expelled and after approval of the General 10 Body, the said decision was communicated to the respondent no. 2 for entering the names of newly elected executive member in Form-B Register. Thereafter, the respondent no. 2, considering the fact that there was dispute between two factions of the Union, directed the respondent no. 3 to make an inquiry in the matter. The respondent no. 3 submitted the report and the respondent no. 2 after perusal of the report, decided the inter-se dispute between the two factions of the Union and inserted the names of alleged newly elected office bearers of the Telco Workers Union submitted by respondent no. 10 to 14 in

Form-B Register and further the names of the petitioners were deleted from the Executive Committee.

15. A Division Bench of Patna High Court in the unified State of Bihar, in the case of Bokaro Steel Workers Union (supra) in para 22 held as under:- 22. On an examination and analysis of the Patna decision (Mukund Ram Tanti's case), The Allahabad, Andhra and the Madras decision, I come to the following conclusions: (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 updating 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 overdue.

16. In the case of Sri R. N. Singh & Anr. (supra), a Division Bench of Patna High Court in para 6 held as under:- 11 6. The submission urged on behalf of the petitioners appears to be sound in law. There is no statute or rule which provides a forum for the adjudication of internal disputes of Trade Unions, nor is there any law which provides a forum for adjudication of disputes relating to election of office bearers. Under Sec. 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. In Form B the name of office bearers has to be entered. Where there is 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 Unions 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 filing a civil suit in a Court of competent jurisdiction. No provision of law or rule has been brought to our notice which authorises the Joint Labour Commissioner to refer for adjudication the internal disputes of law which provides for holding of election under the supervision of Registrar, Trade Unions. Counsel for the petitioners is, therefore, right in submitting that there is no legal authority for issuance of impugned orders (Annexures 12 and

13) under which the internal disputes were referred for adjudication by the Independent Board, and upon its recommendation election is directed to be held under the supervision of Registrar, Trade Unions. A similar view has been taken by a Division Bench of this Court in C.W.J.C. No.3516 of 1981 decided on March 12, 1982. We are in respectful agreement with the principles laid down in the aforesaid judgment

17. Another Single Bench of this Court in the case of Telco Workers Union (supra) in para 19 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 12 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.

18. From the factual context of the judgment of Mukund Ram Tanti (Supra.) as has been cited by the learned Senior Counsel appearing on behalf of the respondent no. 12 and 13, it appears that in that case after the election, the name of the office bearers were sent to the Registrar, Trade Unions whereupon the Registrar made inquiry and found that the election was not held according to the provisions of the rules of Union and further the order of the Registrar was held valid by the Patna High Court by holding that the Registrar has the right to ascertain whether the office bearer were legally elected so as to be recorded in the Form-B register maintained for the purpose of Section 8 of the Act and to be bound for compliance of the provisions of the Act. Further, in the case of Bokaro Steel Workers Union (Supra.) a dispute was raised before the Registrar alleging that no election was held on 27.05.1992 and the list of the office bearers was fake, wherein the Registrar initiated enquiry and thereafter directed for conducting election under the supervision of the Deputy Labour Commissioner, Bokaro Steel City as the representative of the Registrar, Trade Union. It was held that in a dispute between two rival factions claiming to be the office bearer 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 13 section 8 of the Act.

19. On perusal of S. 28 of the Trade Union Act it appears that the registered trade union is required to annually send a general statement of all receipt, expenditure, assets and liabilities during the year ending on the 31st day of December next preceding such prescribed date and together with the general statement, the Trade Union shall also send to the Registrar, a statement showing the change of the office bearer during the year. It is further provided that the Registrar, for the purpose of examining the documents submitted to it, may inspect the certificate of registration, account books, registers and other documents of the Trade Union. Thus, it is clear that the name of the change of the office bearer during the year shall be given annually at the time of filing of annual audited general statement. However, in the facts situation of the present case it is evident that the respondent no. 2 ordered for enquiry not in pursuance of submission of annual audited general statement accompanying the statement of change of office bearers made by the trade union during the year, rather the said enquiry was ordered in the pursuance of claim/counter claim made by two rival factions of the trade union alleging irregularities in holding the meetings against each other. Since, it was not the occasion of submission of annual audited general statement by the trade union, the step taken by the respondent no. 2 to order enquiry in the matter, amounts to entering into the internal dispute of two rival factions of the trade union. The argument of the learned senior counsel for respondent nos. 12 and 13 that the words and other documents referred to in Section 28 (4) of the Act should be given wider meaning cannot be accepted in the factual context of this case. Plain reading of Section 28 (4) of the Act would itself make it clear that the power given to the Registrar, Trade Unions in the said sub section is for the purpose of examination of documents referred to in sub section (1), (2) and (3) of Section 28 of the Act. Thus, the scope of the words and other documents cannot be enlarged to the extent of conferring jurisdiction to the 14 Registrar, Trade Unions to enter into inter se dispute of two rival factions of the Union and to conduct a full fledged enquiry of the said dispute. Thus, in my considered view, the respondent no. 2 acted beyond the scope of S.28 of the Act, 1926. It has been held by the Division Bench of Patna High Court in the case of Shri R.N. Singh (Supra.) that if there is a

dispute as to who are the elected office bearers of a particular union, the Registrar, Trade Union has no jurisdiction to determine as to which of the rival groups of the office bearers is the real one. It is due to the reason that there is no provision in the Act for adjudication of such disputes by any designated officer or authority. Moreover, considering the nature of the enquiry conducted by the respondent no. 3 under the order of the respondent no. 2 cannot be said to be a summary enquiry for the purpose of s. 28 of the Act, by which the respondent no. 3 held the expulsion of the respondent no. 6 and 15 others not accordance with law. On perusal of the enquiry report it appears that the respondent no. 3 actually adjudicated the inter se dispute between the two rival factions of the union.

20. In the Trade Unions Act, 1926, there is no such power given to the Registrar, Trade Union to decide the dispute as to who would be the office bearer of the Trade Union. Although in some states i.e State of Madhya Pradesh, Maharashtra and Gujarat, suitable amendment in the Trade Union Act, 1926 has been carried out by inserting new provision whereby the Registrar Trade Union has been conferred power that if any dispute arises with regard to the office bearers of registered Trade Union, it shall be referred to the Industrial Court. However, there is no such provision in the State of Jharkhand. Different High Courts in India also while considering the similar issue have held that the Labour Commissioner-cum-Registrar Trade Union has no jurisdiction under The Trade Unions Act, 1926 to decide the inter-se dispute of two factions of the Union.

21. For the reasons as aforesaid, the first issue is answered in affirmative by holding that, the respondent no. 2 had no jurisdiction to decide the inter-se disputes raised by the 15 petitioners as well as the private respondents. Accordingly, the order dt. 13.06.2017 passed by the respondent no. 2 is hereby quashed and set aside being without jurisdiction.

22. Before parting with this issue, I would like to observe that in the State of Jharkhand where there are numerous Industries and the disputes between the office bearers of Union frequently come to the High Court invoking Article 226 of the Constitution of India which also consumes the valuable time of the High Court, it is high time when the Government of Jharkhand should also take steps for

making suitable amendment in the Trade Union Act, 1926 so that the inter-se disputes between the office bearers of the trade union may be resolved quickly and effectively by other forum. Re. Issue No.2 23. On due consideration of the facts of the case it appears that the petitioners are alleging that the signatures in the minutes of the meeting dt. 16.11.2016 are duplicate, forged and the persons who are said to have signed the minutes have sworn affidavit that they have not signed it. The petitioners have also claimed that in the General Body meeting held by the private respondents, many members have signed twice, thrice and even four times and also some of the persons who were not the members of the union also attended the meeting. On the other hand, the private respondents have alleged that in the General Body meeting convened by the petitioners on 30.11.2016, out of 416 members claimed to be present on that day, 100 members were on duty and as such the quorum of meeting i.e 10% of the total members was not fulfilled and as such the same was not competent to pass resolution. The said rival claims made by the parties, requires adducing of evidences, examination of documents and other relevant materials. Thus, the dispute raised by both the factions of the Union are purely based on the question of fact. The issue as to whether the disputed question of fact can be adjudicated in a writ jurisdiction is no more res-integra. The Honble Supreme Court in catena of judgments, have held that the High Court while exercising writ jurisdiction should refrain from adjudicating such disputed 16 question of fact.

24. In the case of Steel Authority of India Ltd. and Others. v. National Union Waterfront Workers reported in (2001) 7 SCC1a constitutional bench of Honble Supreme Court in para-126 held as under:- 126. We have used the expression industrial adjudicator by design as determination of the questions aforementioned requires enquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be the Industrial Tribunal/Court whose determination will be amenable to judicial review. In Union of India v. S.B. Vohra reported in (2004) 2 SCC150the Honble Supreme Court held as under:-

20. The power of judicial review of the High Court as also this Court is now well defined in a series of decisions of this Court. It is trite that the Court will not exercise its jurisdiction to entertain a writ application wherein public law element is not involved. (See LIC of India v. Escorts Ltd. [(1986) 1 SCC264: AIR 1986 SC1370 , Food Corpn. of India v. Jagannath Dutta [1993 Supp (3) SCC635: AIR 1993 SC1494 , State of Gujarat v. Meghji Pethraj Shah Charitable Trust [(1994) 3 SCC552 , Asstt. Excise Commr. v. Issac Peter [(1994) 4 SCC104 and National Highways Authority of India v. Ganga Enterprises [(2003) 7 SCC410: (2003) 7 Scale 171]). In view of the aforesaid discussion and the judicial pronouncements, the issue no. 2 is answered in negative by holding that disputed question of fact raised by the petitioners and private respondents cannot be adjudicated in writ jurisdiction. Re. Issue No.3:

25. Now the question arises before this court is as to what appropriate relief can be granted in the present case keeping in view that the interest of large number of workmen is affected due to inter se dispute between two rival factions of the trade union.

26. The Honble Supreme Court in the case of Gyana Pattnaik, General Secretary, Tata Refractories Shramik Sangh v. State Implementation Officer-Cum-Labour Commr., Orissa and Others reported in (2011) 15 SCC565 has held as under:- 17

5. Moreover, having regard to the nature of the dispute involved herein, where different groups are claiming to be the officer-bearers of the Association, we are inclined to take a pragmatic approach to resolve the impasse. Accordingly, we appoint the District Labour Officer, Jharsuguda, as the Returning Officer, to conduct the election of the officer-bearers of Tata Refractories Shramik Sangh, Belpahar, Jharsuguda, within a period of twelve weeks from the date of receipt of a copy of this order. He shall prepare a fresh programme for conduct of the elections within the time specified and shall notwithstanding the order passed by the High Court, conduct the elections in accordance with the bye-laws of the Union, and by secret ballot. The expenses for the election will be borne by the Union. The elections are to be conducted on the basis of the membership as existing in the register of members of the Trade Union.

27. A Bench of Calcutta High Court in the case of Oil & Natural Gas Commission v. State of West Bengal, reported in 1988 (2) LLJ335Cal. has held in para 11 as under:- (11) .. Both the rival groups are claiming that they are the real office bearers. Such a dispute has got to be decided by admitting evidence and examining documents and by considering related and relevant materials. This Court cannot go into such a disputed question of facts. The Registrar of Trade Unions under Sections 8 and 28 of the Trade Unions Act is not a quasi-judicial authority to look into the evidence. The ultimate forum is an ordinary Civil Court where the parties can initiate proceedings for declaration of rights and to obtain consequential reliefs in accordance with the law. Otherwise for obtaining quick remedies there should be a fresh election as per Rules and regulations provided in the Memorandum Articles of Association. Since a comprehensive civil suit will delay the solution of the problem, a deadlock will be created for running the union vis-a-vis there will be a chaos in running the union work and the interest of everybody will suffer. Both the management and the employees will languish with all uncertainties. The working atmosphere will be disturbed. The industrial peace will be in jeopardy and in the absence of quick disposal of the dispute the parties will be in despair, Considering all the aspects and for the foregoing reasons the Registrar of Trade Unions is appointed as a Special Officer and/or is conferred with such rights to conduct the election afresh of the once bearers of Oil and Natural Gas Commission Workmen's Association bearing the Registration No. 10641 within two months from the date of communication of the order by verifying the Voters' list and by asking the intending parties to file the nomination papers and to hold the election by secret ballots and to declare the result of the election according to law and thereafter record the names of the persons so elected under Sections 8 and 28 of the Trade Unions Act. This writ petition is thus disposed of without any order as to costs. Liberty to mention if the situation so required. Petition disposed of without any order as to cost. Liberty to mention if the situation so requires.

28. In the present case, on perusal of the counter affidavit filed by the Management-respondent no. 15 it appears that the wage revision of the other Plants of the establishment has been executed but the wage revision of the employees of the present Plant is pending due to the aforesaid dispute between

two rival factions of the Union. Although the dispute raised by the parties can effectively be adjudicated by the Civil Court, yet if the parties are directed to take recourse before the civil court, it will consume a considerable time which will be detrimental to the cause of the large number of the workmen of the establishment. In the present case, more than half of the term of the present elected members has elapsed but both the factions are fighting with each other for their supremacy in the Union which is jeopardizing the interest of the large number of workmen. Now a day, Trade Union is the part and parcel of the Establishment and as such the smooth working of the Union is necessary for the growth of any industrial establishment as well as in the interest of the workmen. For the aforesaid reasons and following the guiding principles laid down by the Honble Supreme Court in Tata Refractories Shramik Sangh (Supra), the Deputy Commissioner, Jamshedpur (East Singhbhum) is appointed as Special Officer and is directed to get the election of the Union conducted afresh within eight weeks from the date of communication of the order by verifying the Voters' list and by calling for the intending candidates to file their nomination papers and to hold the election by secret ballots as well as to declare the result of the election according to law. The respondent no. 2, thereafter, shall record the names of the persons so elected under Sections 8 and 28 of the Trade Unions Act. The cost of the election shall be borne by the Union. In conducting the election, the Deputy Commissioner may take assistance of District Administration, if required. It is also directed that till the elected members take charge, the office bearers who were functioning by virtue of 2016 election 19 will function as ad-hoc office bearers but during that period their power and function shall be confined only to routine matters which are necessary in the interest of the member of the Union. It is also observed that the structure of the Union shall not be changed under any circumstance, till the respondent no. 2 enters the name of the office bearers in Form-B register after conclusion of election in the aforesaid manner.

29. The writ petitions are disposed of in terms of aforesaid observations and direction. (Rajesh Shankar, J.) Sanjay/NAFR