

Koshi Project Workers Association and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Sep-21-2006

Judge : Aftab Alam, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 19 and 19(2)

Appeal No. : C.W.J.C. No. 6124 of 2006

Appellant : Koshi Project Workers Association and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : Sunil Kumar Mandal, S.C. 15

Advocate for Pet/Ap. : Alok Kumar Sinha, Manish Kumar and Virendra Kumar, Advs.

Judgement :

Aftab Alam, J.

1. This writ petition is filed at the instance of a trade union under the name and style of Koshi Project Workers' Association (Petitioner No. 1) and three individuals who claim to be the office-bearers of the Association/Union. The petitioners' seek to challenge an order, dated 28.12.2002 issued by the Deputy Secretary Revenue (Administration), Water Resources Department, Government of Bihar by which petitioners 2 to 4 were transferred from the Revenue Division, Purnea to Revenue

Division, Buxar, Mohania and Ara respectively. The challenge to the petitioners' transfer is based on the plea that it was against the tripartite agreement dated 29.11.1994.

2. On certain demands raised by the Bihar Water Resources Employees' Federation (of which the petitioner union claims to be a constituent) a conciliation proceeding under the provisions of the Industrial Disputes Act was held before the Labour Commissioner/Conciliation Officer. The proceeding concluded in a tripartite agreement dated 29.11.1994 signed by the representative of the State Government, the Federation and the Labour Commissioner. Clause 1 of the agreement stipulated as follows:

As per the registered constitution of the unions, the transfer of the office-bearers of the central Executive Committee working in recognised Trade Unions of the Water Resources Department shall not be made without their consent during the period of holding post by them. The transfer of the office-bearers under reference, which is contained in this dispute, shall be cancelled.

3. The settlement did not indicate anytime limit or the period for which it would remain in operation. It is significant to note that on an earlier occasion some office-bearers of the petitioner-Union were transferred contrary to the above quoted clause of the agreement. The petitioner union then came to this Court challenging the transfers as being in breach of the conciliation agreement. A Single Judge of the court refused to interfere in the matter observing that the petitioner could seek relief under the provisions of the Industrial Disputes Act. In appeal filed by the Union the Division Bench confirmed the order of the Single Judge. The petitioner Union then took the matter to the Supreme Court in Civil Appeal No. 5031 of 1998. The Supreme Court allowed the appeal, set aside the orders passed by this Court and quashed the impugned transfer order(s) to the extent it concerned the office bearers of the petitioner Union.

4. About four years later the government once again issued the impugned transfer order and the petitioner once again brought it before this Court in C.W.J.C.No. 5748 of 2003. In that case the State took the stand that the petitioners 2 to 4 were elected to their respective offices in January 2001 and consequently their terms

came to end in January, 2003. In substance they were no longer office-bearers when the matter was being considered by the court in September, 2004. Having regard to the stand taken by the State Government the court did not pass any positive order but disposed of the case asking the concerned authorities to consider as to whether or not petitioners 2 to 4 held any offices in the Union at the relevant time. In pursuance of the order of the court the Secretary, Water Resources Department held an enquiry and passed the order dated 20.1.2005, holding that the term of petitioners 2 to 4 in the Union's office was from 2001-03 and on the date of the order they did not hold any office and hence, they were not covered by the tripartite agreement. This writ petition is filed challenging the order passed by the Commissioner cum Secretary on 20.1.2005 as well as the impugned transfer order dated 28.12.2002.

5. Having regard to the point on which the transfer order is being challenged the finding of the Commissioner cum Secretary seem to be of no relevance. Petitioners 2 to 4 admittedly held office for the period 2001-03. Hence, the transfer order dated 28.12.2002 was undeniably issued at the time when they were office-bearers of the Union. Moreover, Mr. Alok Kumar Sinha submitted that though normally the election of office-bearers is required to be held after a period of two years from the date of the previous election, the relevant rules provided that in case of delay in holding the next election the previous office-bearers would continue in office. In this case after petitioners. 2-4 were elected in 2001 the next election was held on 24.4.2005 in which they were re-elected to their respective offices and, therefore, it is incorrect to hold that the petitioners were not office-bearers of the Trade Union at any point during the relevant period.

6. It is noted above that the transfer order was issued on 28.12.2002. On that date the three petitioners were undeniably office-bearers of the Union. In other words, the transfer order on the date of its issuance was in breach of the conciliation agreement and was bad in light of the order of the Supreme Court. That being the position even if the petitioners ceased to be the office-bearers of the Union after 2003 they would not be transferred on the basis of an order that was bad at the time of its issuance. The impugned order of transfer, therefore, must be held to be inoperative and ineffective being contrary to the conciliation agreement and the

petitioners cannot be shifted on that basis.

7. It must, however, be said that it seems to the court that the whole matter is going on without much application of mind on the part of the State Government.

8. Section 19 of the [Industrial Disputes Act, 1947](#) deals with the period of operation of settlements and awards. Section 19(2) provides that a settlement that contains the period of its operation would come to an end on expiry of that period but a settlement, like the present one, that does not specify any period of operation would continue till a notice to terminate the settlement is given by either party. Section 19(2) reads as follows:

19(2) Such settlement shall be binding for such period as is agreed upon, by the parties and if no such period is agreed upon for a period of six months (from the date on which the memorandum of settlement is signed by the parties to the dispute) and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

9. When this case was taken up on the previous occasion it appeared to the court that the employees might be taking advantage of an agreement that was not intended for all time. The court accordingly called the Advocate General and advised him to ask the departmental authorities to look into the matter, pointedly referring to the provisions of Section 19(2) of the Industrial Disputes Act. All that was required to be examined was whether the State Government intended this arrangement to be an all times arrangement or the State Government wanted to put an end to the practice that no office-bearers of the Trade Unions could be transferred without his consent. In the first case nothing was required to be done and the State Government could have simply recalled the impugned transfer order. In the second case all that was required to give to the Union a simple notice of termination of settlement under Section 19(2) of the Industrial Disputes Act.

10. A counter affidavit has been filed on behalf of the State which brings on record a notice given to the petitioner Union. This can hardly be called a notice under

Section 19(2) of the Act. It is rather a show cause notice which the officers seem accustomed to issue. After making certain preliminary remarks that are of no relevance the Union is asked to show cause why the agreement should not be cancelled under Section 19(2) of the Industrial Disputes Act.

11. Section 19(2) of the Industrial Disputes Act does not envisage any ifs and buts or any notice to show cause to the other side. It just requires a plain and simple statement that the settlement would come to an end on expiry of two months from the date of the notice as provided under Section 19(2) of the Act. It is highly debatable that the show cause notice dated 13.7.2006 might be treated as notice of termination of settlement under Section 19(2) of the Act and whether on that basis the settlement would come to an end.

12. In light of the observations made above, the impugned transfer order dated 28.12.2002 (Annexure-8) is quashed. If the State Government even now wants to put an end to this practice it would be open to it to terminate the settlement by giving a proper notice under Section 19(2) of the Industrial Disputes Act.

13. Let copies of this order be send to the Labour Commissioner and the Commissioner cum Secretary, Department of Irrigation.

14. Let a copy of this order be given to the State Counsel.

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