

Satna Cement Vs. State

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Court : Madhya Pradesh

Decided On : Jul-24-1996

Reported in : (1998)IIILLJ1172MP

Judge : T.S. Doabia, J.

Acts : Trade Union Act, 1926; Madhya Pradesh Relations Act, 1960 - Sections 2(3)

Appeal No. : W.P. Nos. 84/85 and 846/1986

Appellant : Satna Cement

Respondent : State

Judgement :

T.S. Doabia, J.

1. This order shall dispose of two Writ Petitions, namely, (i) Writ Petition No. 84 of 1985 Maihar Cement Karamchari Sangh. Maihar v. Registrar of Representative Union and Ors., and (ii) Writ Petition No.846 of 1986 Satna Cement Factory Tatha Quarry Mazdoor Congress, Satna v. The State of M.P. and Anr.

2. The facts have been taken from writ petition No. 846 of 1986. The Satna Cement Factory Tatha Quarry Mazdoor Congress, Satna figures as a petitioner. It is a registered trade union. The requisite recognition has been granted under the

Trade Unions Act, 1926. There is a further recognition given to this union under the M.P. Industrial Relations Act, 1960 (hereinafter referred to as the Act of 1960). The requisite certificate of recognition has been placed on the record as Annexure P/3.

3. Before noticing the events which led to the filing of this petition, another fact be also taken note of. The Trade Unions are given recognition for the local areas as envisaged by M.P. Industrial Relations Act, 1960. The term 'local area' has been defined in Section 2(23) of the Act. The petitioner- Union was a recognised union for the Satna district. However, vide Annexure P/4, there was re-defining of local areas. A separate local area for Tehsi I Maihar was carved out. This led to a show cause notice being issued to the present petitioner. Their status, as recognised, was sought to be re-determined. The reply has been given. Thereafter, an order has been passed on January 9, 1985. By this order, the petitioner-Union has been recognised as the representative union for Maihar Tehsil also. It has been concluded that it has 35% of the membership with it. This factor was taken into consideration for giving it recognition for Maihar Tehsil.

4. The writ petitioner contends that there was no necessity to give a separate recognition for Maihar Tehsil and the carving out of the separate local area for Maihar Tehsil is violative of Article 14 of the Constitution of India.

5. The question as to whether there can be a separate local area in the same district is not res-integra. This Court in the decision reported as *Rajva Pariwahan Karmachari Maha Sangh Ujjain v. State of Madhya Pradesh*, 1983 MPLJ 68 tooknote of this aspect of the matter and made the following observations :

'There is no provision in the M.P. Industrial Relations Act, 1960, or the Amending Act 56 of 1976, providing for a situation resulting from a change in local area. The M.P. Industrial Relations Act suffers from a lacuna in this respect and in absence of any provision in the Act similar to Section 28E of the Trade Unions Act, 1926, it must be held that where there is alteration in any local area, a union recognised as the representative union for a local area before its alteration, would cease to be a representative union for the altered area, because the local area for which it was recognised as a representative union has ceased to be in existence. Till such

union is granted recognition as a representative union for the altered area, it ceases to function as the representative union in pursuance of the certificate of recognition granted to it for a local area which has ceased to exist.'

As such, no exception can be taken to the carving out of a separate local area for the purposes of 1960 Act. Apart from this, it be seen that the carving out of local areas is an act which is legislative in character. This would normally be beyond judicial review. Such a view has been expressed by the Supreme Court of India in the case reported as *Sundarjas Kanyalal Bhathija v. Collector, Thane*. AIR 1990 SC 261. In the above case, a separate area was sought to be carved out for the purposes of Bombay Provincial Municipal Corporation Act, 1949. While dealing with the power of the State Government, to so constitute the area, the Supreme Court observed that the intention of the Government in exercising such a power is neither executive nor administrative. If the requisite statutory provisions have been duly complied with then the Courts would say no. In this view of the matter, it is held that the carving out of a separate local area under the Act of 1960 cannot be said to be inapt.

5. The net result of the petition would be that the petitioner-Union will have to have separate recognition for separate local areas. The Registrar functioning under the Act has come to the conclusion that the petitioner-Union has 51% of workmen with them so far as Satna local area is concerned and 35% of the workers are with the Maihar Tehsil. Taking note of this, the Registrar has given recognition to the petitioner union. As indicated above, the only argument raised by the petitioner is with regard to carving out of separate union. This argument cannot be accepted in view of the reasoning given above.

6. Coming to the facts of Writ Petition No.84 of 1985 : It be seen that the contention of the writ petitioner in the above writ petition is that it was having majority of workmen for Maihar Tehsil. Annexure-B attached with the writ petition, it has been categorically mentioned in para 3 that it has 505 members on its rolls. It is accordingly, contended it represents more than 51 % of the total number of employees in the cement industry in the local area of Maihar Tehsil. This is a disputed question of fact and cannot be gone into in this writ petition. As such, it

would be apt to remand the matter back to the Registrar who would re-decide the matter after hearing both the parties.

7. Before parting with the judgment, the preliminary objection raised by the learned counsel for the petitioner appearing in Writ Petition No. 846 of 1986 be also noticed. According to the learned counsel, an alternative remedy has been provided under Section 22 of the Act. It is accordingly, contended that the writ petitioner in writ petition No.84 of 1985 should be left free to pursue his remedy before the appellate forum. This argument cannot be accepted. The writ petition has remained pending for almost 10 years. Rejecting the application on the ground- that alternative remedy is available, would not be apt See the decision given by the Supreme Court in the case reported as Hirday Narain v. I.T. Officer, Bareilly AIR 1971 SC 33. In para 12 of the judgment, it was observed as under :

'We are unable to hold that because a revision application could have been moved for an order correcting the order of the Income-tax Officer under Section 35, but was not moved, the High Court would be justified in dismissing as not maintainable the petition, which was entertained and was heard on the merits.'

Even otherwise, there is no merit in the contention of the learned counsel for the petitioner as this matter is being remanded to the original authority because the hearing given by the original authority is the proper forum for entertaining and deciding all contentious issues.

8. Accordingly, the question as to whether the petitioner in Writ Petition No. 84 of 1985 or petitioner in Writ Petition No. 846 of 1986 is entitled to recognition in the Maihar Tehsil would be re-decided by the Registrar after affording opportunity of hearing to both the sides. The parties would appear before the concerned Registrar on August 29, 1996. The Registrar would take steps with a view to dispose of this litigation as early as possible preferably within six months.

There would be no order as to costs.

Security, if paid, be refunded to the petitioner. Disposed of accordingly.

