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Court : Kolkata

Decided On : Mar-05-1954

Reported in : AIR1955Cal189,58CWN457

Judge : Sinha, J.

Acts : [Constitution of India](#) - Article 226; ;[Trade Unions Act, 1926](#) - Section 21

Appeal No. : Civil Rule Nos. 3611 to 3614 of 1953

Appellant : Mohammed Ibrahim

Respondent : Assansol Iron and Steel Workers' Union and Ors.

Advocate for Def. : S. Chaudhury, ;R. Chaudhury and ;Anil Kumar Das Gupta, Advs.

Advocate for Pet/Ap. : Mahabir Prosad, ;Phanindra Kumar Sanyal and ;Pritibhusan Barman, Advs.

Judgement :

ORDER

Sinha, J.

1. The facts in this case are as follows. The petitioner is a workman employed as a crane driver at the Kulti Works of the Indian Iron and Steel Company Ltd. That

company and the Indian Standard Wagon Company Ltd., Burnpur, are allied concerns. The Assansol Iron and Steel Worker's Union is a Trade Union of the workers of the two companies and is registered under the Trade Unions Act of 1926 (hereinafter referred to as the 'Trade Union').

2. A 'Trade Union' (as defined by the Indian Trade Unions Act' 16 of 1926 hereinafter called the 'Act') means any combination whether temporary or permanent, formed primarily for the purpose of regulating the relation between workmen and employers or between workmen and workmen or between employers and employers or for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more Trade Unions. (Section 2(h)). Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of the - Act with respect to registration, apply for registration of the Trade Union (Section 4). In order to be eligible for registration, the Trade Union must have an executive constituted according to the provisions of the Act, and the rules of the Trade Union must contain certain provisions as laid down in Section 6 of the Act. If the Trade Union contravenes any provisions of the Act after receiving a notice from the Registrar, the registration can be cancelled; Upon registration, the Trade Union becomes a body corporate by the name under which it is registered. Under Section 29, the State Government has power to frame regulations for the purpose of carrying into effect the provisions of the Act.

3. The constitution and rules of the Trade Union are annexed to the petition and marked 'A]. It contains the following provision:

'All workers working in Standard Wagon Company S. C. o. B. Ltd, I. I. and S. Ltd., Kulti Works, E. L. C. Co., of the age of 18 years or more shall be entitled to be an ordinary member of the Union by agreeing to abide by the terms of the constitution.'

4. The workers of all these companies howeverdo not automatically become members. They haveto be enrolled and must agree to abide by theconstitution and they have to make certain payments in the nature of subscription and donation.The supreme power of the Union is vested in the delegates conference,

which meets annually and lays down the policy, programme and line of action to be taken by the Trade Union for the year. The delegates conference constitutes the General Council. The Council elects the Executive Committee which manages and conducts all affairs of the Union according to the directions of the General Council and the delegates conference. The annual delegates conference must, according to the rules, meet not later than the month of May.

5. There is no dispute that the Executive Committee for the year 1951-52 was duly constituted. According to respondent No. 1 (The Trade Union), the General Council for the years 1953-54 came into being as a result of an election duly held on 12-5-1953.

6. The notice convening the election is set out in an annexure to the affidavit in opposition (affirmed by Krishna Chandra Prasad). It appears that on 14-5-1953, the General Secretary duly intimated to the Registrar of Trade Unions, the fact that the elections had been duly held on 12-5-1953. Names of 28 members were forwarded as having been elected to the General Council.

7. On 3-6-1953, further intimation was given that 33 members had been elected to the Executive Committee, by the General Council. It is stated that upon the formation of the new Executive Committee, the old Executive Committee relinquished office. According to the petitioner, there was no such election held, and the members of the old Executive Committee are illegally continuing in office. In fact all the members of the old Executive Committee have been made parties to this rule 'of nominee' (opposite parties 2 to 36). It appears that since January 1953, there was trouble between the two companies and a section of their workers. It first started by a lightning strike by the workers of the Hot Mills Sections of the Sheet Mills of the Indian Iron and Steel Co. Ltd., at Burnpur, followed by a 'go slow' policy. The disaffection spread to other sections of the workers at Burnpur and it appears that the efforts of the management of the companies, and the intervention of Government did not prove very effective, at least for a considerable time.

8. On 2-5-1953, some of the workers at Burnpur convened a meeting and passed resolutions to the effect that the Executive Committee and the office bearers of the

Trade Union did not enjoy the confidence of its members. It appointed 5 persons to take charge of the assets and the affairs of the Union and to hold a general election. A similar meeting was held by Kulti workers on 9-8-1953 and a similar resolution passed. These resolutions were sent to the Registrar of Trade Unions who wrote back on 22-4-1953 and 15-5-1953 stating that the constitution of the Union did not contain any provision for such a meeting and no notice of the resolutions could be taken unless the validity thereof was declared by a competent Civil Court. I might mention here that an industrial dispute between some workers and the I. I. and S. Co., Ltd., has been referred by Government to an Industrial Tribunal under the Industrial Disputes Act, 1947, and the proceedings are pending. The facts regarding the disputes and differences between the companies and the workers are all disputed. It however appears that it assumed noticeable proportion at Burnpur and not at Kulti.

9. Under the constitution of the Trade Union, workers who were members on 31-3-1953, could alone participate in the general election. It therefore does appear that the actual election was held at a time when matters were in disturbed state. In view of this, the Union proposed to hold another general election and for that purpose a notice was issued first on 27-10-1953 (annexure 'c') and finally by a comprehensive notice dated 24-11-1953 (annexure 'D' to the petition) the relevant part of which is as follows:

'Asansol Iron and Steel Workers' Union

Head Office-Burnpur

Election of Delegates and General Council

Representatives.

1. This election of the delegates and representatives to General Council of the Asansol Iron and Steel Workers' Union was held in May last. In spite of that, on the advice of the Prime Minister, the Industries Minister, Government of India and the Chief Minister, Government of West Bengal, the president of the Union has agreed to hold the same.

2. This election will be held as per section 5(a)(b)(c)(d)(e) of the Constitution of the Union for;

(1) delegates.

(2) representatives of the General Council. 3. The members entitled to take part in this election will be:

(Section 4)

For Kulti:

(a) Those who fully paid their subscriptions till March 1953, on or before 31-3-1953. Burnpur:

(b) Those who fully paid their subscriptions till March 1953 on or before 31-3-1953.

(c) Those who paid up their arrears or paid one year's subscription till 31-3-1953 on or before 22-9-1953, according to the notification of the Union.

(d) Those who became members of the Union by paying the year's subscription till 31-3-1953 on or before 22-9-1953 according to the notifications by the Union.

(e) Those who were in arrears but paid up their subscriptions for one year till 31-3-1953 on and from 28-10-1953 to 31-10-1953 according to the notification by the Union.

(f) Those who became members of the Union¹ by paying one year's subscription till 31-3-1953, on and from 28-10-1953 to 31-10-1953 according to the notification by the Union.'

The petitioner states (paragraph 12 of the petition) that on 2-10-1953, he and other workers of the Kulti Works of the I.I and S. Co. Ltd., applied to the opposite parties for having their names enrolled as members of the Union but it was refused. This is categorically denied on behalf of the opposite parties. The organising secretary of the Union in his affidavit (para. 32) says:

'It is denied that on 2-10-1953, or on any other date at all the petitioner and/or any other workers applied to be enrolled as members of the respondent Union and/or that the respondents or any of them refused to enrol the petitioner or any of the other applicants for enrolment as alleged.'

10. Thus there is a dispute on a fact which is vital and goes to the root of the application. If the petitioner never made any application, no question can arise of the maintainability of such an application. It is well known that in an application under Article 226, the Court does not (except in exceptional circumstances) go into disputed questions of fact. In fact, the only evidence produced (apart from the statement of the petitioner) before me is a copy of a letter alleged to have been sent by a person describing himself as 'Secretary, Action Committee of Kulti Workers' to the Registrar of Trade Unions, dated 2-10-1953. This letter states that the writer was sending a list of 4725 names of employees of the Kulti Works who desired to cast their vote in the 'forthcoming annual election of the Union', but that the Union Secretary had refused to enrol them as members. This letter is stated to be signed by somebody whose signature is illegible, and no affidavit has been filed by him. The list which was sent by him is not before me and I do not know whether it includes the petitioner's name. Under the circumstances, I cannot accept this annexure as any evidence at all to prove the fact that the petitioner did apply for enrolment and that it was refused.

11. This would be quite sufficient to dispose of this application, but I think it is desirable that I should also deal with the legal position, assuming that such an application had been made.

12. The learned Advocate General of Bihar (followed up by Mr. Sanyal) argued that under the constitution of the Trade Union, all workers in the Kulti Works of the I. I. and S. Co. Ltd., of the age of 18 years or more are entitled to be members of the Trade Union and therefore the petitioner had a legal right to be enrolled as a member. No authority has been shown to me which lays down the proposition that simply because the constitution of a Trade Union lays down that it is intended to act as a Union of a particular class of workers, that it confers upon them a legal right _ to be enrolled as members, a right enforceable by law. The rules of the

Trade Union are not statutory rules and are not like regulations which might be framed under Section 29 of the Act. My attention has been drawn to an English decision --'Cox v. National Union of Pounding Workers of Great Britain and Ireland', (1928) 44 ILR 345 (A).

In that case, the rules of a particular Union prescribed the amount of superannuation benefit and funeral expenses. The Executive Council of the Union passed a resolution that payments should be reduced by one third. A member of the Union objected to this and brought an action contending that this act of the Executive Council was *ultra vires* of the constitution of the Union' and asked for an injunction. Astbury J., refused to interfere, on the ground that the Court had no right 'to interfere with the 'internal affairs' of the Union. Although this decision is not on all fours with the present case, it does throw light upon the question as to the nature of the rules which are framed by a Trade Union.

13. But even if there exists such a right, Mr. Chaudhury has pointed out that the right is of a private nature and cannot be enforced by a *mandamus*. He has referred to Article 1304 of Halsbury, Vol. 9, pages 769, where cases have been referred to of corporations working under a Royal Charter and yet the Courts have refused to interfere in disputes between such a body and its members. ('R. v. Bank of England', (1819) 2 B and Ald 620 (A); -- 'R. v. London Assurance Co', (1822) 5 B and Ald 899 (B)). I have not been referred to a case relating to a Trade Union which is on all fours to the facts of the present case, but I think that the law relating to corporations incorporated under a statute would be fully applicable. In the case of such a corporation (here the Trade Union has been incorporated under the Act), it has, as an incident belonging to it, a right to make; any person it likes member, unless it is clearly, deprived of that right by prescription or express words in its charter (Halsbury (Hailsham Edn.) Vol. 8, page 30, Article 44. Anon, (1728) 1 Barn KB 137 -- 'R, v. West Looe Corporation', (1825) 3 B and C 677 (E)).

14. A person having the requisite qualification does not necessarily possess an absolute right to be a member of a corporation (-- 'R. v. Eye Corporation', (1822) 1, B and C 85, (F) Halsbury (Hail-sham Edn.), Vol. 8, p. 30, Article 44).

15. As I have already pointed out, there is nothing in the Act or the rules made under the Act which confers absolute right upon the petitioner to be admitted as a member of this particular Trade Union. Such a right might have been-brought into existence if there was an express provision in the Act or the constitution of the Trade Union, that no one having the requisite qualifications could be refused, membership. A mere description in the' constitution of the class of persons which can become members, or the qualifications necessary for membership does not confer an absolute right of becoming a member upon any person who might belong to that class or answer that description or possess such qualification and the Court will not enforce such a claim by mandamus. In other words, mandamus will lie to compel a corporation to do its statutory duty, but not where there is no duty cast by statute or where the corporation has a discretion in the matter.

16. Mr. Chaudhury also points out that even according to the constitution of the Trade Union, a worker of the Kulti Works of the I. I. and S. Co. Ltd., is only entitled to become a member if he has 'agreed to abide by the terms of the constitution', and there is nothing to show that the petitioner ever agreed to do so. There is not even an averment in the petition to that effect.

17. If the right to become a member is not a legal right, then of course the point as to extension of time in the notice dated 24-11-1953, becomes of little consequence. It is argued that under the rules the elections had to be effected by May 1953. If that was not done, it is said that an extension of time should have been granted not merely to the Burnpore Workers but also to the Kulti workers. It is the case of the opposite parties that the election has already been held in May, but as there exists disputes, the present General Council and Executive Committee are willing to have a further election held. I need not go into the question as to the validity of any such further election because that matter is not before me. It is clear however that the time for holding the annual elections is merely directory and not mandatory. Extension of time for enrolment of members is a discretionary matter or at least a matter of policy. It is said that the extension has been granted to Burnpore workers because there was trouble at Burnpore and. it has not been extended to Kulti workers because there was no trouble there. Looked at from this point of view, it does not seem to be an unreasonable thing to do. In any event,

there is certainly no question of mala fides.

18. Lastly if there is a legal right at all in the petitioner, I do not see why he cannot file a suit and get his remedy. Since the matter involves disputed questions of fact, that would be the proper remedy. I may add also that a writ of prohibition cannot lie as the respondents are not inferior Courts or tribunals. For the reasons stated, this application fails and must be dismissed. The Rule is discharged. All interim orders are vacated. There will however be no order as to costs.

19. The operation of this order is stayed for two weeks in order to enable the petitioner to appeal. Respondent Union had agreed not to publish the names of the persons who have already been elected, until the disposal of this application. That position will continue during this period. Any further order for stay or direction in that behalf must be obtained from the Court of appeal

(His Lordship then disposed of Civil Rules Nos. 3612 to 3614 of 1953 individually. As they involve the same questions of law as in Civil Rule No. 3611 of 1953 they are not printed here -- Ed.).

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