

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No. 13353 of 2009

H.C. DHYANI & ORS. Petitioners

Through: Ms. Asha Jain Madan and
Mr. Mukesh Jain, Advocates.

versus

REGISTRAR OF TRADE UNION & ORS. Respondents

Through: Mr. L.K. Garg, Advocate for R-2.
Mr. Abhinav Vasisht, Advocate for R-3.
Mr. B.K. Pal with
Ms. Nalini Pal Negi, Advocate for R-4.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be
allowed to see the order? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the order should be reported in Digest? | Yes |

ORDER
05.04.2010

W.P.(C) No. 13353 of 2009 & CM No. 14682 of 2009

1. Twenty-three Petitioners stated to be employees of the Respondent No.3 Indian Oil Corporation Limited ('IOCL') and members of the Petroleum Workers' Union ('Union') have filed this writ petition for seeking a direction to the Registrar of Trade Unions (Respondent No.1 herein), and the Deputy Labour Commissioner (South), Government of the National Capital Territory of Delhi ('GNCTD') (Respondent No.2 herein) "to immediately hold the elections of the Working Committee of the delegates of the Petroleum Workers' Union (Indian Oil Unit) under its supervision through secret ballot." The second prayer is for an order to restrain the Respondent IOCL from negotiating with and/or issuing welfare funds to the present

Working Committee of the Union (Respondent No.4 herein) which “has already become defunct after the expiry of its tenure on 21st July 2009.”

2. Article III of the Constitution of the Union which is registered under the Trade Unions Act, 1926 (‘TU Act’) sets out, inter alia, ‘the structure of the Union’. The management of the Union is vested in the Central Organisation, Provincial Organisations and the Local Organisation. The Management of the Central Organisation is to be vested in the following bodies:

(i) The Delegates’ Conference which “will meet one in two years or may meet more often as and when necessary and shall be the supreme organ of the Union.”

(ii) The Working Committee which “will ordinarily meet once in 6 months or may meet more often as and when necessary.”

3. Clause V (c) of Article III of the Constitution of the Union provides that the Delegates’ Conference will consist of one delegate from every local unit provided the membership of that unit does not exceed more than 20 members and if there are more than 20 members then one delegate will be elected for every 20 members or a major fraction thereof. Clause V (d) of Article III reads as under:

“(d) Delegates would be elected at the General Body Meeting of all the members of the local unit. A Delegate once elected will normally hold his office for two years unless he is recalled by the members of that local unit by a resolution adopted at a meeting.”

4. Clause V(e) of Article III of the Constitution of the Union states that the

Central Working Committee of the Union shall consist of the President, Senior Vice-President, Vice-Presidents (minimum of three and maximum of five), General Secretary, Four Joint Secretaries, the Treasurer, two Joint Treasurers and one member after every 100 members or a major fraction thereof provided that “in the case of Provinces, the Working Committee members from that State will be elected taking into consideration the total aggregate membership of the State concerned.” A further proviso states that “the Delegates’ Conference may admit any honorary member as additional member or Working Committee subject to Section 22 of the Indian Trade Union Act, 1926, or any additional member may be co-opted as provided in Article II, Clause II, Sub-Clause (e).”

5. It is not in dispute that the delegates are to be elected at the General Body Meeting of the members of the local unit. A delegate once elected holds office for two years unless recalled by the members of that local unit by a resolution after the meeting. From amongst the delegates are elected the office bearers of the Working Committee, Respondent No.4 herein. Consequently, the hierarchy is that the Union has a Delegates’ Conference which is the highest organ from which the Working Committee is constituted. In terms of Article IV Clause 6 (b) (i) of the Constitution of the Union, the Central Working Committee will implement “all resolutions and directions of the Delegates’ Conference.”

6. It is obvious that the term of the Central Working Committee has to necessarily be co-terminus with the term of the Delegates’ Conference

which is comprised of the elected members from a local unit and normally holds office for two years unless recalled earlier by the members of that local unit by a Resolution after a meeting. This Court finds on a collective reading of all the above clauses of the Constitution of the Union that there is nothing therein which permits the extension of the term of the Working Committee of the Union beyond what is stipulated therein.

7. What, however, appears to have happened in the present case is that even before the term of the Respondent No.4 Working Committee came to an end on 21st July 2009, a meeting was convened of the delegates on 7th February 2009. The minutes of the said meeting have been enclosed with the counter affidavit filed on behalf of the Respondent No. 4 Working Committee. 154 delegates are shown to have attended the said meeting. Comrade Vidhur Bhargava who chaired the meeting informed the meeting that the elections of the delegates were to be held sometime in April/May 2007 and that “the time for the delegates election was nearing.” Mr. Kanhaiya, Assistant Secretary stated that since the long term settlement (‘LTS’) being negotiated with the IOCL Management was in progress, “holding the elections at this juncture shall make the office bearers busy in electioneering and the management will take the advantage of the situation. As 25 months have already passed, the management might call the meeting on LTS in near future.” It was suggested that since elections would take 3 to 4 months, it was not advisable to hold it at that point in time. He accordingly made a suggestion that “the election of delegates be held after wage revision and work related allowance settlements were reached and signed.” The minutes show that this suggestion was accepted. It records that no one came forward

to oppose the proposal. Accordingly the meeting resolved “that the election of the delegates would be held after the above two settlements are signed.”

The explanation for not holding elections to the Delegates Conference and thereafter to the Working Committee of the Union is justified on the basis of the decision taken at the above meeting of 7th February 2009.

8. The case of the Petitioners is that failure to hold elections to the Delegates Conference before the expiry of two years and the perpetuation of the Delegates Conference and the Respondent No.4 Working Committee beyond the period of two years is illegal. Annexed to the petition are copies of the representations made by the Petitioners on 18th June, 1st September, 9th September and 16th September 2009 to the Respondent No.4 Working Committee. In addition, representations were made to the Respondent No.2, Deputy Labour Commissioner, GNCTD and Respondent No.3 IOCL.

9. On 30th September 2009, the Petitioners wrote to the IOCL asking it not to negotiate with the present Working Committee. They enclosed a list of around 800 members the Union who according to them had “given their consent for holding early elections of the union.” The Petitioners were informed by a letter dated 27th October 2009 of Respondent No.2 that “there is no power conferred upon the Registrar of Trade Unions in relation to holding the elections.” The Petitioners were advised to approach the civil court for directions. A dispute was raised by the Petitioners before the Registrar of Trade Unions. Meanwhile, the present writ petition was filed.

10. In its counter affidavit, the Working Committee has not denied the above

facts. It is further pointed out that some of the Petitioners had attended the meeting of the Delegates held on 7th February 2009 were therefore party to the resolution adopted at the said meeting. Consequently, they could not object to the postponement of the elections. Reliance is placed on the decision of the Bombay High Court in *Telco Kamgar Sangathana v. Avinash Pandurang Toro (1990) 1 LLN 60* where the prayer for stay of the election of the working President was refused. It is maintained that no illegality has been committed by Respondent No.4 and the election of the Delegates would be held after finalization of the LTS and wage revision settlement for which negotiations were in progress with the Respondent No.3 IOCL.

11. On 22nd January 2010 an order was passed by this Court directing Respondent No.4 to inform the Court about the date of the election of the Working Committee. However, on 19th February 2010 Respondent No.4 did not inform the Court of any such decision. On that date the following order was passed by this Court:

“1. It is a matter of concern that elections which were to be held to the Working Committee of the Respondent No.4 have till date not been held, although the term of the present Committee came to an end sometime in April/May 2009. Learned counsel for the Respondent No.4 has taken the Court through the document dated 7th February 2009 where it is recorded that the ‘delegates’ assembled decided that they will not hold elections till such time a decision is not taken by the management on wage revision.

2. Workers who were aggrieved by the non-holding of elections have approached the Registrar of Trade Unions. On the previous date this Court was informed that the hearing would take place before the Registrar of Trade Unions on 17th February 2010. Today counsel appearing for the Registrar informs the Court that the hearing could not take place on that date.

3. This Court expresses its displeasure that the statutory authority has not found time to deal with this issue with any sense of urgency. Counsel now assures this Court that next date fixed before the Registrar of Trade Unions is 9th March 2010, and that the Registrar will, irrespective of whether all the parties are present before him, proceed with the hearing and take a decision within a period of ten days thereafter. A copy of the decision of the Registrar be placed on record in this Court within a period of ten days thereafter.

4. List on 26th March 2010.

5. In the event the Registrar does not take a decision as directed by this Court, he will personally remain present in the Court on the next date of hearing.

6. Order dasti to the parties. A copy of this order be delivered to the Registrar of Trade Union within five days.”

12. Two developments took place thereafter. The first was that on 22nd March 2010 a meeting of the Union was held where, *inter alia*, the date for holding the elections of the Delegates was discussed. Although a reference was made to the resolution dated 7th February 2009 it was decided to finalise

a date for the election of Delegates since the LTS was likely to be reached before 30th June 2010. After deliberations it was decided that “the date of election of the Working Committee will be declared sometime in August 2010 and meanwhile in July 2010 the Delegates Election may be conducted.”

13. On 22nd March 2010, the Registrar of Trade Unions gave his decision holding that there was no power under the TU Act to issue directions regarding the holding of elections to a registered trade union.

14. Ms. Asha Jain Madan, learned counsel appearing for the Petitioners assails the said order dated 23rd March 2010 passed by the Registrar and submits that in the decision in *North Eastern Railway Employees Union v. IIIrd Additional District Judge, Farukhabad AIR 1988 SC 2117* it was observed that the Registrar of Trade Unions is the authority charged with the duty of administering the powers of the TU Act. In that case the elections were directed to be held under the supervision of the Registrar of Trade Unions or by an officer designated by him for that purpose. Further reliance is also placed on the judgment in *Indian Explosives Workers Union v. State of Bihar (C.W.J.C. 1545/1989 (R) dated August 29, 1989)* where the contention that the Registrar of Trade Unions has no jurisdiction to hold elections, was rejected by the Supreme Court. In *B.C. Sharma v. M.L. Bhalla JT 2006 (8) SC 600* it was held that although technically the Registrar of Trade Unions may not have the authority to supervise the holding of elections under the TU Act, he can direct the said authority or an officer designated by the Registrar to supervise the holding of elections. It is

accordingly submitted that the Registrar of Trade Unions fell in error in not acknowledging his power to direct holding of an election.

15. Mr. B.K. Pal, learned counsel appearing for Respondent No.4 on the other hand contended that no illegality had been committed by the Working Committee. It had passed a valid resolution on 7th February 2009 agreeing to postpone the election. According to him, there is no particular provision in the Constitution of the Union limiting the tenure of a Working Committee. In any event, the attempt was not to perpetuate the term of the present Delegates Conference and Working Committee. It was submitted that since the Respondent No.4 plans to hold elections to the Delegates Conference in July 2010 and the subsequent elections to the Central Working Committee in August 2010, the apprehension of the Petitioners should be allayed and they should await the completion of the LTS/wage revision negotiations.

16. On a perusal of the order passed by the Registrar of Trade Unions, this Court finds that the cases referred to therein hold that the Registrar is not a quasi-judicial authority under Section 28 of the TU Act to decide an election dispute between two groups. The decisions that lay down this law are *Oil & Natural Gas Commission Workmen's Association v. State of West Bengal, 1988 I LLN 1052 (Calcutta High Court)*, *Mecon Employees Union v. State of Jharkhand 2002 (92) FLR 275 (Jharkhand High Court)* and *Falguni Chakraborti v. State of West Bengal 2002 LIC 65 (Calcutta High Court)*.

17. In the considered view of this Court the view taken by the Registrar was

erroneous. He was not asked to resolve the inter se dispute between the Petitioners on the one hand and the Respondents on the other. The request was that since the Delegates Conference has come to a closure, a direction should be issued for conducting fresh elections.

18. This Court fails to appreciate why such a direction cannot be issued by the Registrar of Trade Unions. It was explained in *North Eastern Railway Employees Union* that the Registrar of Trade Unions is the “authority charged with the duty of administering the powers under the TU Act. In that case it was directed that the elections should be held under the supervision of the Registrar of Trade Unions.” The present case is really not an election dispute as wrongly understood by the Registrar. Also the Registrar has not been called upon to resolve the dispute between the rival factions of the union. The request was only for holding an election. In the facts and circumstances, this Court finds no reason to decline the prayer for holding the elections to the Central Working Committee at an early date.

19. A further issue that has arisen is that the LTS negotiations are underway and till such time the freshly elected Delegates Conference and Working Committee are in place, which may take till end August 2010, if one went by the affidavit filed on behalf of Respondent No.4 Working Committee, the Petitioners would be denied participation in the LTS being negotiated with the IOCL. The explanation offered by Respondent No.4 that no illegality has been committed by it, ignores the fact that on the contrary there is no

provision in the Constitution of the Union that permits the extension of the tenure of a Working Committee beyond the period of two years. No such provision was shown except some general provisions which vest the Central Working Committee with certain powers. It is not possible therefore to sustain the order dated 23rd March 2010 passed by the Registrar of Trade Unions. It was his duty to ensure that neither the Delegates Conference nor the Working Committee of the Union is permitted to prolong their respective terms in office contrary to the express provisions of the Constitution of the Union. If so permitted it would be subversive of the very scheme of the TU Act the object of which is to ensure democratic functioning of trade unions.

20. Since Respondent No.4 has already committed itself to holding Delegates Election in July 2010 and elections for the Working Committee in August 2010, this Court binds Respondent No.4 to those statements. It is directed that the election to the Delegates Conference be completed on or before 31st July 2010 and the election to the new Working Committee be completed by 31st August 2010.

21. In the interregnum, this Court finds it appropriate to direct that whenever hereafter any meeting is held by the IOCL in regard to LTS, two representatives of the Petitioners will also be permitted to participate in the meeting. This interim arrangement will continue till such time the elections are held in accordance with the above time schedule, and new office bearers take charge. The Petitioners will furnish to the IOCL within a period of ten days the names of the two persons who will be representing them at the meetings to be held by the IOCL for working out an LTS.

22. The writ petition is accordingly disposed of with the above directions.

S. MURALIDHAR, J.

APRIL 05, 2010
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