

GAHC010119622023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1969/2020

OIL AND GAS EMPLOYEES UNION AND ANR.
A REGD UNION DULY REGD UNDER THE PROVISIONS OF THE TRADE
UNION ACT
1926 HAVING ITS OFFICE AT OIL INDIA LTD DULIAJAN DIST- OF
DIBRUGARH
ASSAM
AND DULY REP. BY SHRI DURLOV KUMAR DUTTA
S/O- JADAV CHANDRA DUTTA AGED ABOUT 32 YEARS R/O GENICHUK
P.O. MOHMORA IN THE DIST OF DIBRUGARH
ASSAM-786101

2: DURLOV KUMAR DUTTA
S/O- JADAV CHANDRA DUTTA AGED ABOUT 32 YEARS R/O GENICHUK
P.O. MOHMORA IN THE DIST OF DIBRUGARH
ASSAM-786101
VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY PRINCIPAL SECRETARY
TO THE GOVT OF ASSAM
LABOUR WELFARE DEPTT
DISPUR
GHY- 06

2:THE LABOUR COMMISSIONER CUM REGISTRAR OF TRADE UNIONS
ASSAM
OFFICE OF LABOUR COMMISSIONER
ASSAM
GOPINATH NAGAR
GHY- 16
ASSAM
3:S.Z. HAZARIKA
IAS

S/O LT. IRSHAD ZAMAN HAZARIKA
LABOUR COMMISSIONER CUM REGISTRAR OF TRADE UNIONS
GUWAHATI-781016
DIST. KAMRUP (M)
ASSAM
4:THE ASSISTANT LABOUR COMMISSIONER
DIBRUGARH
JAIL ROAD
DIBRUGARH
ASSAM
5:OIL INDIA LTD.

6:DY. GENERAL MANAGER (ER)
OIL INDIA LTD. EMPLOYEE RELATION DEPTT. DULIAJAN
ASSAM-786602
7:INDIAN OIL WORKERS UNION
HAVING ITS REGISTERED OFFICE AT STATION ROAD DULIAJAN DISTRICT
DIBRUGARH ASSAM PIN 786602 REPRESENTED BY ITS GENERAL
SECRETARY BHASKAR JYOTI BORAH SON OF LATE BUDDHA KANTA
BORAH RESIDENT OF NO 2 VILLAGE CHAPATOLI PO BHADOI PANCHALI
PIN 786191 IN THE DISTRICT OF DIBRUGARH ASSAM

With
I.A.(Civil)/1543/2023

OIL AND GAS EMPLOYEES UNION AND ANR.
A REGD UNION DULY REGD UNDER THE PROVISIONS OF THE TRADE
UNION ACT, 1926 HAVING ITS OFFICE AT OIL INDIA LTD DULIAJAN
DIST- OF DIBRUGARH, ASSAM

2: DURLOV KUMAR DUTTA
S/O- JADAV CHANDRA DUTTA AGED ABOUT 32 YEARS R/O
GENICHUK
P.O. MOHMORA IN THE DIST OF DIBRUGARH
ASSAM-78610

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY PRINCIPAL SECRETARY, TO THE GOVT OF ASSAM, LABOUR
WELFARE DEPTT, DISPUR , GHY- 06

2:THE LABOUR COMMISSIONER CUM REGISTRAR OF TRADE UNIONS
ASSAM
OFFICE OF LABOUR COMMISSIONER
ASSAM
GOPINATH NAGAR

GHY- 16
ASSAM

3:S.Z. HAZARIKA
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LABOUR COMMISSIONER CUM REGISTRAR OF TRADE UNIONS
GUWAHATI-781016
DIST. KAMRUP (M)
ASSAM

4:THE ASSISTANT LABOUR COMMISSIONER
DIBRUGARH
JAIL ROAD
DIBRUGARH
ASSAM

5:OIL INDIA LTD.
REP .BY ITS CHAIRMAN AND MANAGING DIRECTOR
DULIAJAN
ASSAM-786602

6:DY. GENERAL MANAGER (ER)
OIL INDIA LTD. EMPLOYEE RELATION DEPTT. DULIAJAN
ASSAM-786602

7:INDIAN OIL WORKERS UNION
HAVING ITS REGISTERED OFFICE AT STATION ROAD DULIAJAN
DISTRICT DIBRUGARH ASSAM PIN 78660

Advocate for the Petitioner : MR G N SAHEWALLA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 24.07.2023

Heard Mr. G.N. Sahewalla, learned senior counsel, assisted by Mr. H.K. Sarma, learned counsel for the petitioners. Also heard Ms. N. Ahmed,

learned counsel for respondent nos. 1 to 4, appearing on behalf of Mr. J. Roy, learned senior counsel, and Mr. U.K. Nair, learned senior counsel, assisted by Mr. K. Kalita, learned counsel for respondent nos. 5 and 6 and Mr. B.D. Das, senior counsel, assisted by Ms. R. Deka, learned counsel for respondent no.7.

2) The connected interlocutory application was filed by the writ petitioner. In the considered opinion of the Court, in the same effort that would be taken in disposing of the said interlocutory application, the writ petition can also be decided. Hence, with the consent of the learned senior counsel and counsel for the appearing parties, the writ petition, which is otherwise in the *admission* stage, has been heard along with the said connected interlocutory application.

3) The learned senior counsel for the respondent nos. 5 and 6 and the learned senior counsel for respondent no. 7 have both raised the preliminary issue of maintainability of this writ petition because of appellate forum available to agitate the issues raised in this writ petition. In this regard, it was submitted that the registration of the petitioner union was cancelled by the impugned order and in respect of the said action, provision for appeal is provided in section 11 of the Trade Unions Act, 1929, which according to the learned senior counsel for respondent nos. 5 and 6 and respondent no. 7, is the statutory remedy available to the petitioner, for which this Court may not like to decide highly disputed factual issues.

4) The said preliminary issue relating to alternative remedy is vehemently contested by the learned senior counsel for the petitioner.

Facts of the case:

5) In brief, the case of the petitioners is that the petitioner no. 1, namely, Oil and Gas Employees' Union is a Trade Union within the meaning of Trade Unions Act, 1926. The petitioner no. 2 is a Member of the said Trade Union and is the General Secretary thereof. The said trade union was originally registered on 02.04.1998 as "Technical Workers' Union", with its registration number as 1718. On 11.05.2013, a resolution was adopted in the general meeting of the Trade Union to alter the name of the petitioner no. 1 Trade Union to "Oil and Gas Employees' Union". Accordingly, the certificate of registration was re-issued in the new name.

6) It is projected that the Labour Officer, Dibrugarh vide letter dated 17.09.2013, had informed the Deputy Labour Commissioner, Dibrugarh about the general meeting of the Technical Worker's Union held in the office of the Oil India Workers' Union on 11.05.2013 and renaming of the Union as Oil and Gas Employees' Union. It was reported that the records of general meeting along with names of members was verified and found to be genuine and that more than 300 members had attended the meeting. Thereafter, vide letter dated 08.11.2013, the Registrar of Trade Unions had informed the General Secretary of Technical Workers' Union that the request for amendment in clause 1(a), 5(a), 7(a), 7(b) and insertion of new symbol and clause 7(c) and 7(d) in Trade Union's Constituion had been registered on 07.11.2013. Accordingly, it is projected that the general meeting of the Union and the resolution of change of name was lawful in all respects.

7) Thereafter, the Registrar of Trade Unions (respondent no. 2) had issued a show-cause notice dated 22.03.2017, as to why the registration of Oil and Gas Workers' Union should not be withdrawn or cancelled as irregularities

mentioned therein were in violation of section 28 of the Trade Unions' Act, 1926. The petitioner had submitted their response on 28.03.2017. After a lapse of about 2 (two) years, the petitioner had received a show-cause notice dated 19.03.2019, under section 10 of the Trade Unions Act from the respondent no. 2 intimating why the registration of certificate of the petitioner no. 1 Union should not be cancelled/ withdrawn. The aggrieved petitioner had approached this Court and this Court by order dated 11.04.2019, passed in W.P.(C) 2528/2019, set aside the said notice on the ground that two month's notice was not served on the petitioner no. 1 Union, which was the mandate of section 10 of the Trade Unions Act.

8) The respondent no. 2 thereafter, issued a second show-cause notice dated 20.09.2019, to the petitioner no. 1 Union under section 10(c) of the Trade Unions Act. On receipt of the said notice, the petitioner no.1 had requested the respondent no. 2 to provide them with documents which were relied upon while issuing the said show-cause notice. As the documents were not supplied and two month's time was about to expire, the petitioners preferred another writ petition, and this Court, by order dated 15.11.2019, passed in W.P.(C) 8345/2019, directed the respondent no. 2 to furnish documents to the petitioners and to proceed with the second show-cause notice dated 20.09.2019 only after giving reasonable time to the petitioner no. 1 Union to file its reply. Thereafter, documents were provided on 30.11.2019, but as the documents were incomplete, the petitioner vide letter dated 16.12.2019, had asked for the rest of the incomplete documents. The annexures mentioned in the enquiry report dated 14.11.2018, were furnished to the petitioner no. 1 vide letter dated 21.12.2019, which is stated to be served on 27.12.2019. Accordingly, the petitioner no.1 vide letter dated 27.12.2019,

had prayed for two week's time to file show-cause reply. On 07.01.2020, the petitioner no. 1 had submitted its show- cause reply.

9) On 04.03.2020, the petitioner no. 1 was served with a 'speaking order' dated 20.02.2020, which is impugned in this writ petition, thereby cancelling the registration of the petitioner no. 1 Union by invoking section 10(b) of the Trade Unions Act, 1926.

Submissions by the learned senior counsel for the petitioners:

10) The learned senior counsel for the petitioner has submitted that the initial show-cause notice was issued under section 10(c) of the Trade Unions Act, but the speaking order was passed under section 10(b) of the said Act. It was submitted that without recording any finding on proof of fraud, if any committed by the petitioners, the respondent no. 2 drew a presumption of fraud on the basis of stray opinion expressed by the Judicial Department. It is also submitted that if the change of name of the Trade Union from Technical Workers' Union to Oil and Gas Employees Union was wrong, no case was made out to cancel the registration but the original name of the Union could have been restored and that for change of name of the Union, provision of section 10 of Trade Unions Act would not apply.

11) It is submitted that the case of the petitioners was that the meeting of the Union was held in the office of Oil India Workers' Union, but a perverse finding was recorded to the effect that there was no Oil India Workers' Auditorium and meeting could not have been held there by ignoring the document showing that the petitioner no. 1 Union had obtained prior permission from the concerned police station to hold a meeting.

12) Moreover, to sustain the allegations that the respondent no. 2 was biased, it was strenuously submitted that the respondent no. 2, by lodging a caveat in his personal name, had proved that he had some personal interest in the matter.

13) It was also submitted that the rival group had filed the complaint on 31.05.2017, after four years from the date of change of name and three years after change of name of the petitioner no. 1 Union was registered.

14) Per contra, both the learned senior counsel for the respondent nos. 5 and 6 and respondent no. 7, had supplemented each other and opposed the writ petition by submitting that there has been suppression of material fact to the extent that after issuance of notice under section 10(b) of the Trade Unions Act, another notice was issued to the petitioner no. 1 under section 10(c) of the Act, which has been suppressed. It was submitted that all the points raised by the petitioner were highly disputed questions of fact and therefore, this was a fit case to relegate the petitioner to the appellate Tribunal under section 11 of the Trade Unions Act, 1926.

15) It was submitted that in the impugned speaking order dated 20.02.2020, finding was recorded to the effect that from the record of the proceeding of the general meeting the petitioner no. 1 Union, it appeared that (i) 4 (four) members had expired; (ii) 8 (eight) members had retired; (iii) 1 (one) female member was passed in Kolkata; (iv) 1 (one) person was a non-worker; (v) 1 (one) person was an Executive and not related to any Workers' Union; (vi) (one) person had remained absent as per enquiry report received from the Assistant Labour Commissioner, Dibrugarh; (vii) 8 (eight) individuals identity numbers did not match with the ID. Numbers written against the names

listed in the original complaint. It is submitted that there is no pleading in the instant writ petition to dispel the said finding, which is indicative of existence of fraud.

16) It is submitted that as per their instructions, the proceeding under section 10 of the Trade Unions Act, 1926 is summary in nature, but in the appellate proceeding before the Industrial Tribunal, the parties are permitted to lead evidence and the procedure prescribed in a civil suit is followed.

17) Hence, it is submitted that as the petitioners can avail alternative and efficacious remedy before the appellate forum under section 11 of the Trade Unions Act, 1926, the respondents are refraining from making any reply to the disputed questions of facts.

18) The learned counsel for the respondent nos. 1 to 4 have also adopted the submissions made by both the learned senior counsel for respondent nos. 5 and 6 and respondent no. 7.

19) Considered the materials available in the writ petition, affidavit-in-opposition filed by the respondent nos. 1 to 4, respondent nos. 5 and 6, affidavit-in-opposition filed by respondent no. 7 and two affidavit-in-reply filed by the petitioners.

20) In the considered opinion of the Court, all the points on which the learned senior counsel for the petitioners and the respondents have submitted, are highly disputed questions of fact and requires examination of evidence, whether it be the question as to whether on 11.05.2013, the general meeting of the petitioner no. 1 Union was properly held or not, or the question as to whether the genuine members of the petitioner no. 1 Trade Union had attended

and participated in the said meeting. It may be mentioned that an enquiry was conducted by the Labour Officer, Dibrugarh on 30.10.2018, and an enquiry report dated 14.11.2018 was submitted before the Deputy Labour Commissioner, Assam. As per the said report, 11 persons who had purportedly attended the meeting held on 11.05.2013, had denied their participation. Whether those persons had not participated or they were later on allegedly won over by the other side are also disputed questions of fact requiring determination. Whether any notice was issued upon the petitioner no. 1 Union under Section 11(b) of the Trade Unions Act, 1926 is also a disputed question of fact. Moreover, the correctness or otherwise of the contents of the letter dated 17.09.2013, issued by the Labour Officer, Dibrugarh is also a disputed question of fact. Thus, for determination of highly disputed questions of facts, it would be just and proper to relegate the petitioner to alternative and efficacious statutory remedy available against cancellation of registration of the petitioner no. 1 Trade Union.

21) The learned senior counsel for the petitioners had referred to the case of *Saraswat Co-op. Bank Employees Union v. State of Maharashtra & Ors.*, Docid# IndiaLawLib/475842. In the said case, the writ petition was entertained by the Bombay High Court. In the said case, the finding returned by the Division Bench was that the Union's return was filed on the date when the order cancelling the registration was passed. Moreover, it was held that unless the intentional contravention of the Rules or Act is established, the Registrar cannot cancel the registration. As indicated herein before, the facts of the present case is distinguishable. It cannot be said that there was no material before the Registrar of the Trade Unions (respondent no. 2) to cancel the registration, but whether the said materials are sustainable or not would be subject to

adjudication by the appellate Court.

22) The learned senior counsel for the petitioners had also cited the case of *Radha Krishan Industries v. State of Himachal Pradesh & Ors.*, (2021) 6 SCC 771, on the maintainability of the writ petition without exhausting alternative remedy. The relevant para 27 thereof is quoted below:-

27. *The principles of law which emerge are that:*
 - 27.1. *The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.*
 - 27.2. *The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.*
 - 27.3. *Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.*
 - 27.4. *An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.*
 - 27.5. *When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.*
 - 27.6. *In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.*

23) Thus, under the factual matrix of this case, the Court is inclined to

invoke the observations made in para 27.6 of the herein before referred case of *Radha Krishan Industries (supra)*.

24) The case of (i) *A.C. Ananthaswamy & Ors. V. Boraiah (Dead) by LRs.*, (2004) 8 SCC 588, (ii) *State of Maharashtra v. Dr. Budhikota Subbarao*, (1993) 2 SCC 567, and (iii) *Svenska Handelsbanken v. M/s. Indian Charge Chrome & Ors.*, (1994) 1 SCC 502, were cited to show that when there is an allegation of fraud, it must be proved that the representation made was false to the knowledge of the party making such representation or that the party could have no reasonable belief that it was true; that there is a strict proof for allegations of fraud; and proof of fraud cannot be found merely on suspicion but the materials and evidence must prove it. The Black's Law Dictionary was also cited for the dictionary meaning of word "fraud". In this case, the respondent no. 2 had adjudicated the matter summarily and concluded that the element of fraud was present. In the present case, the petitioners could not dispel the allegations. However, if the petitioner is relegated to file an appeal, not only the petitioners shall get an opportunity to rebut the allegations, but the persons alleging fraud would have to prove the same. Therefore, in the opinion of the Court, the petitioner shall not suffer any prejudice if they are relegated to appellate Court.

25) It is evident that in this case, in the adjudication process under section 10 of the Trade Unions Act, 1926, the parties were not called upon to prove facts including allegations of fraud by adducing evidence. Therefore, in the considered opinion of the Court, the petitioners are entitled to one opportunity to dispel allegations against them and also to the respondents to prove their allegations, which can be effectually done in appeal filed under

section 11 of the Trade Unions Act, 1926.

26) Be it mentioned that the respondent no. 2 is the adjudicatory authority in respect of matters relating to section 10 of the Trade Unions Act, 1926. The adjudicatory authority, who otherwise is not supposed to have any personal interest in the orders passed by him. However, in this case the respondent no. 2 had filed a caveat, being Caveat No. 187/2020. Therefore, in the opinion of the Court, the petitioners have every right to suspect that the respondent no. 2 had some bias against the petitioners and/or had some personal interest in the matter. In this case, the legal maxim that justice must not merely be done, but must also be seen to be done would apply. The feeling of the petitioners that the decision of the respondent no. 2 is biased cannot be said to be an unfounded imagination of the petitioners. It is not shown that it is the practice of the Labour Commissioner- cum- Registrar of Trade Unions, Assam that after every order passed by the said authority, a caveat is lodged.

27) Therefore, relegating the petitioners to the original adjudicatory authority i.e. before the respondent no. 2 would definitely not be justified and there is every likelihood that the re-adjudication by the respondent no. 2 would be perfunctory as the said authority, after filing caveat and exposing his concern for following-up his order before this Court is not likely to dispassionately re-hear the matter.

28) Therefore, the Court is inclined to relegate the petitioner to file an appeal before the Industrial Tribunal, Dibrugarh, if so advised. This writ petition was filed on 11.03.2020. Therefore, if the appeal is filed within a period of 1 (one) month from today, the delay, if any in filing the appeal would be condonable as time spent by the petitioner before this Court from 11.03.2020 to

21.07.2023.

29) Subject to filing of an appeal within one month from today, the interim order dated 13.03.2020, directing status quo to be maintained and staying the operation of the impugned order dated 20.02.2020 shall stand extended till the appeal is first listed and/or taken up by the appellate Court for admission/adjudication. Needless to mention that if the appeal is not filed within the time allowed, the interim order shall stand lapsed by efflux of time.

30) It is hoped that the appeal, if filed, shall be disposed of as expeditiously as possible, if necessary by discouraging unnecessary adjournments.

31) As the petitioners have been relegated to file an appeal, it is provided that none of the observations made in this order shall prejudice the parties when the appeal is heard and adjudicated by the appellate Court.

32) The writ petition stands disposed of in terms as indicated above, leaving the parties to bear their own cost.

33) As a consequence of disposal of the writ petition, the connected interlocutory application has become infructuous and the same also stands dismissed.

JUDGE

Comparing Assistant