

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 243 of 2017**

1. Jagdish Dubey S/o Late Shri Ramjahul Dubey Aged About 50 Years R/o Post Amora Byaha, Gopal Nagar, Police Station Gopal Nagar, District Janjgir Champa Chhattisgarh.
2. Rajeshwar Singh S/o Shri Hari Singh Aged About 53 Years R/o New Woko Vistas Corporation Limited, Gopal Nagar, Police Station Gopal Nagar, District Janjgir Champa Chhattisgarh.
3. Umakant Soni S/o Late Shri Hari Singh Prasad Soni, Aged About 54 Years R/o Lafarge Cement Factory, Gopal Nagar, Police Station Gopal Nagar, District Janjgir Champa Chhattisgarh.
4. Suman Prasad Dubey S/o Ishwar Dutt Dubey Aged About 51 Years R/o Post Amora Byaha, Gopal Nagar, Police Station Gopal Nagar, District Janjgir Champa Chhattisgarh.
5. Romnath S/o Shri Bharatlal, Aged About 49 Years R/o Gulmuhar Complex, Railway Colony P 2, Gopal Nagar, Police Station Gopal Nagar, District Janjgir Champa Chhattisgarh.
6. Dilip Singh Maderiya S/o Shri Lal Singh Maderiya, Aged About 47 Years R/o New Woko Vistas Corporation Limited, Gopal Nagar, Police Station Gopal Nagar, District Janjgir Champa Chhattisgarh. **---- Petitioners**

Versus

1. Shri Premram Sahu General Secretary Lafarge India Employee Sramik Sangh (I N T U C), Aarsmeta Cement Plant, Gopal Nagar, Police Station Gopal Nagar, District Janjgir Champa Chhattisgarh.
2. Shri R. B. Tiwari President, Cement Sramik Sangathan Lafarage, Aarsmeta Cement Plant, Gopal Nagar, Police Station Gopal Nagar, District Janjgir Champa Chhattisgarh.
3. Shri Vishwanath Chandrakar S/o Shri Amarnath Chandrakar, Address Lafarge Cement Plant, Gopal Nagar, Police Station Gopal Nagar, District Janjgir Champa Chhattisgarh.
4. Shri Krishna Kumar Verma S/o Shri Magauram Verma, Address Lafarge Cement Plant, Gopal Nagar, Police Station Gopal Nagar, District Janjgir Champa Chhattisgarh.
5. New Woko Vistas Corporation Limited (Formaly Lafarge India Limited), Aarsmeta Cement Plant, Gopal Nagar, Police Station Gopal Nagar, District Janjgir Champa Chhattisgarh.
6. Registrar Of Trade Unions, Block No. 3, Second Floor, Indrawati Bhawan, New Raipur Chhattisgarh. **...Respondents**

For Petitioners	:	Mr. S.P. Kale, Advocate
For Respondents No.1 to 4	:	Mr. N.K. Vyas, Advocate
For Respondent No.5	:	Mr. Bhaskar Payashi, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

12.12.2017

With the consent of the parties, the matter is heard finally as it arises out of interim order.

1. The petitioners claiming to be lawful office bearers of a Trade Union Cement Majdoor Sangh filed an application before the Registrar Trade Union for grant of registration as a Trade Union. The application was granted. Aggrieved by the order of Registrar, respondents No.1 to 4 filed a petition/appeal challenging the said decision. Initially, an interim order was passed by the Industrial Court on 24.08.2017 staying the effect of the order of the Registrar. The petitioners filed their reply and also applied for vacating stay. When the matter came up for hearing on 26.10.2017, the Industrial Court affirmed the interim order till final disposal and posted the matter for framing of issues and admission of document. It is this order which is under challenge in this case.

2. Learned counsel for the petitioners made submission with regard to irregularity and illegality in exercise of jurisdiction that the Industrial Court did not apply its mind to the petitioners' objection to the maintainability of the proceeding and application for vacating stay and merely by allowing formal amendments, affirmed the interim order. He would submit that the proceeding drawn before the Industrial Court are in the nature of challenge to the legality and validity of the order of Registrar which is outside the purview of adjudication under Section 28(J) of the Trade Union Act.

3. Per Contra, learned counsel for the respondents would submit that the Registrar had registered the petitioners' Union without complying with the statutory requirements of law and therefore, the respondents had to challenge the said order before the Industrial Court.

4. After hearing learned counsel for the parties, I am of the view that the

impugned order is not sustainable for the reason that it suffers from irregularity and illegality in exercise of jurisdiction.

5. It is not in dispute that the petitioner had filed an application for vacating stay and raised an objection to the maintainability of the proceedings. The Industrial Court, however, did not decide the objection and application for vacating stay. There are no reason assigned in the order as to how the petitioners' objection and grounds for vacating stay were considered.

6. The protection of interim nature is ordinarily to be granted when prima facie case is made out and balance of convenience is in favour of the party praying for injunction and is able to satisfy that in the absence of grant of injunction, irreparable injury is likely to be caused.

7. I do not find that any of these considerations prevailed with the Industrial Court while affirming the ex parte stay order granted earlier.

8. The Industrial Court was obliged under the law to consider and decide application for vacating stay by examining grounds stated therein.

9. True, it is that at this stage of consideration on interim applications/stay applications/injunction applications, detailed reasons are not required to be recorded because that is not the stage of final adjudication. Nevertheless, some brief reasons indicating application of mind is necessary. In a case where there is objection to the maintainability of the proceeding, it is always proper that those objection should be decided by framing appropriate issues either as a preliminary issue, if it is purely a question of law or as an issue of jurisdiction/maintainability after collecting oral and documentary evidence.

10. Mechanical exercise of power by the Industrial Court needs to be undone by appropriate judicial interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

11. To the extent, impugned order affirms the ex parte stay granted earlier on 24.08.2017 is set aside. Rest part of the order is not being interfered with. It is stated that the case is listed for further proceeding before the Industrial Court on 14.12.2017. The Industrial Court shall fix a date of hearing on application for

vacating stay filed by the petitioners and decide the same within a period of four weeks i.e. on or before 15th of January, 2018. The petitioners may pray for framing of issues with regard to the maintainability of the proceeding.

12. The petition is accordingly allowed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Rekha