

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.1601 of 2019

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.11.06.2019 passed in Civil Miscellaneous Appeal No.18 of 2018 on the file of the Principal District Judge, Medak, at Sangareddy confirming the order dt.12.06.2018 passed in Interlocutory Application No.551 of 2018 in Original Suit No.112 of 2018 on the file of the Senior Civil Judge, Sangareddy.

2. The petitioner herein is 1st defendant in the above suit.
3. There is a Trade Union by name Bharat Heavy Electricals Limited (B.H.E.L.) United Employees' Trade Union (**hereinafter referred to as 'the Union'**) with registration No.A-3522, Ramachandrapuram, Hyderabad.

The pleadings of respondent nos.1 and 2 in the suit:

4. The respondent nos.1 and 2 / plaintiffs claimed to be the President and General Secretary of the said Union, and also claim to have got elected to the said positions pursuant to a General Body Meeting called by one K. Venkateswarlu (who is said to be General Secretary of the said Union) on 05.03.2018 fixing the said meeting on 22.03.2018.

5. It is the contention of respondent nos.1 and 2 that as per Bye-law No.11 of the bye-laws of the said Union they were elected in an Annual General Body meeting held on 22.03.2018; that petitioner herein, who was former President since 2003 and whose duty it was to maintain account books and registers, refused to allow inspection of the account books; that there was a complaint made to the Deputy Commissioner of Labour, at Sangareddy suspecting misappropriation of funds by petitioner; that the Deputy Commissioner of Labour addressed Ex.P.4 letter dt.03.03.2018 to 2nd respondent and others stating that his Office has certain limitations though it had observed that the Union is not maintaining records properly; that in the interest of working class, the members of the Union may request the General Secretary of the Union to call for a General Body wherein the complaint made by them should be discussed in detail, and as per the decision taken by the General Body further action would be taken. It was also observed in the said letter that since the General Body is the supreme authority to take the decision about the functioning or otherwise, it can also decide the behaviour of an Office-Bearers of a Trade Union.

6. It is further contended by respondent nos.1 and 2 that as per the said advice, the respondent nos.1 and 2 had requested the President and General Secretary of the Union by name S.D.V. Krishnamraju (1st Defendant) and K. Venkateswarlu to call for General Body meeting; that 1st defendant refused to call for General Body meeting;

and so, K. Venkateswarlu, who was General Secretary, issued notice dt.05.03.2018 calling the General Body meeting on 22.03.2018. It is contended that in the said meeting a view was expressed that the appellant misappropriated the Union funds and it was unanimously resolved to remove him from the post of President, and that 1st respondent was elected as President, and 1st respondent nominated the 2nd respondent as General Secretary and another person as Joint Secretary and Treasurer.

The prayer in the suit:

7. A relief of declaration that the 1st respondent was elected President and 2nd respondent as General Secretary of the Union, apart from a consequential injunction to restrain the petitioner from interfering with the day-to-day affairs and Union activities of respondent nos.1 and 2 in the Union Offices, was sought in the above suit.

The Written Statement of petitioner :

8. Written Statement was filed by petitioner opposing grant of relief to respondent nos.1 and 2. *Inter alia*, it was contended that though the said K. Venkateswarlu, who had issued the request on 05.03.2018 for the General Body meeting scheduled on 22.03.2018, was General Secretary of the Union, he was the General Secretary only till 01.11.2017; that he resigned on 01.11.2017 as General Secretary, and one N. Sailu was elected as General Secretary in his place. It is contended that K. Venkateswarlu, not being the General

Secretary of the Union after 01.11.2017, could not have called for a General Body meeting through notice dt.05.03.2018 on 22.03.2018, and consequently, decisions taken in the said meeting have no legal validity.

I.A.No.551 of 2018 filed by respondent nos.1 and 2:

9. Along with the suit, respondent nos.1 and 2 filed Interlocutory Application No.551 of 2018 under Order XXXIX Rules 1 and 2 of Civil Procedure Code, 1908 seeking temporary injunction restraining petitioner from interfering with activities of the Union, and reiterating the contents of the plaint. It is also stated in the said application that petitioner, though removed as President in the General Body meeting held on 22.03.2018, had approached the B.H.E.L. Management claiming to be the existing President of the Union, and on 28.03.2018 the Management had advised respondent nos.1 and 2 to get the matter decided before the competent Civil Court to decide as to who is the President and General Secretary of the Union to give facilities as per Law.

Counter-affidavit filed in I.A.No.551 of 2018

10. Counter-affidavit was filed by petitioner reiterating the stand taken by him in the Written Statement.

The order dt.12.06.2018 in I.A.No.551 of 2018

11. By order dt.12.06.2018, the Trial Court allowed the said I.A. It recorded that the Deputy Commissioner of Labour had made an

observation in Ex.P.4 regarding improper maintenance of records; in Exs.R.1 to R.23, filed by petitioner, there is no mention regarding maintenance of records; that though the petitioner was President from 2003 till 01.11.2017, he had produced Ex.R.12, copy of a Bank Passbook issued on 15.02.2018 showing that a Bank Account was opened in 2018; that 1st respondent claimed to have got elected as President in the General Body Meeting held on 22.03.2018 and had also filed Ex.P.27, i.e., copy of Minutes book; that Ex.P.27 reveals that the General Body meeting was held under the Chairmanship of K. Venkateswarlu on 22.03.2018, and it was resolved therein that petitioner had misappropriated funds of the Union. It held that he was removed and 1st respondent was unanimously elected as President.

12. It noted the plea of petitioner that K. Venkateshwarlu was not the Secretary on 05.03.2018 as he had resigned on 01.11.2017, and also the said K. Venkateswarlu had no right to call for a General Body meeting. It also referred to another Notice Ex.R.15, issued by one N. Sailu, General Secretary, proposing to hold a General Body meeting on 11.04.2018 under his Chairmanship removing K. Venkateshwarlu and others from the Membership of the Union and electing the petitioner as President. It however observed that all the (338) Members of the Union had signed the resolution, but the signature of petitioner was put on 12.04.2018, whereas other Office-Bearers signed on 16.04.2018, 15.04.2018 and 16.04.2018 respectively which

indicated that these people were not present on the date of holding the General Body meeting on 11.04.2018.

13. The Court below therefore came to the conclusion that when these persons themselves were not present, the presence of other persons on 11.04.2018 was doubtful. It then observed that with the above material it cannot be said whether the procedure followed by petitioner is correct or not, but documents produced by respondent nos. 1 and 2 show that there are disturbances in the Union and there are also two groups. It observed that it is better to allow respondent nos. 1 and 2 to go on with the activities of the Union till final adjudication of the suit.

Civil Miscellaneous Appeal No.18 of 2018

14. Assailing the same, the petitioner filed Civil Miscellaneous Appeal No.18 of 2018 before the Principal District Judge, Medak at Sangareddy.

Order dt.11.06.2019 passed in Civil Miscellaneous Appeal No.18 of 2018

15. The said Appeal was also dismissed on 11.06.2019. The lower Appellate Court also recorded the observations made in Ex.P.4 by the Deputy Commissioner of Labour that petitioner did not maintain accounts of the Union. It observed that the Trial Court found that petitioner claimed to have been elected in the General Body meeting on 11.04.2018, but the resolution in that regard did not mention about election of other members of the Union, and the resolution indicates

that other persons elected to the General Body signed subsequent to the date of General Body meeting; and this indicates that the elected persons were not present on the day when the General Body meeting was held on 11.04.2018.

16. It accepted the resolution passed in the General Body meeting held on 22.03.2018 under the Chairmanship of K. Venkateshwarlu wherein petitioner was removed as President, and respondent nos.1 and 2 were elected as President and General Secretary of the Union. It opined that the Trial Court had correctly appreciated the material placed before it and the view of the Trial Court did not call for interference by it.

The Present Civil Revision Petition :

17. Assailing the same, the present Civil Revision Petition is filed.

18. Heard Sri E.V.V.S. Ravi Kumar, counsel for petitioner; and Sri Sree Ram Prasad, counsel appearing on behalf of Smt. P. Vijaya Lakshmi, counsel for respondents.

19. Before I deal with the issues arising in this Revision, it is important to note the Bye-laws of the Union which are marked as Ex.P.2 / R.6 and, in particular, Bye-law Nos.24 and 25 which deal with calling for General Body meetings of the Union.

20. Bye-law Nos.24 and 25 state as follows :

“24. General Body Meeting : The President may instruct the General Secretary to call for a General Body Meeting of the members of the Union,

whenever he thinks necessary and shall himself call it on requisitions signed by 1/20th of the total strength of the Union within 30 days of the receipt of requisition.

25. *Members of Managing Committee* may call for General Body Meeting : - On receipt of the requisition signed by one-twentieth of the total strength of the Union, if the President fails to call for a General Body Meeting within the period prescribed, any member of the Managing Committee after giving a notice may call for such meeting.”

21. In the instant case, it is not in dispute that prior to 22.03.2018 the President of the Union was petitioner and he was removed as such only in the meeting held on 22.03.2018, according to respondent nos.1 and 2. It is also the pleading of respondent nos.1 and 2 that the petitioner refused to call for a General Body meeting to discuss the issue of misappropriation of funds / improper maintenance of accounts.

22. In this situation, the General Secretary of the Union as per the later part of Bye-law No.24, can himself call a General Body meeting on requisitions signed by 1/20th of the total strength of the Union within (30) days of the receipt of requisition. Likewise, a General Body meeting under Bye-law No.25 can be called for which there ought to be a requisition of 1/20th of the total strength of the Union, for any Member of the Managing Committee to call for a General Meeting.

23. There is no mention of any such requisition given by 1/20th of the Members of the Union in the complaint of Sri K. Venkateshwarlu, the person who issued the Notice dt.05.03.2018 calling for the General Body meeting to be held on 22.03.2018.

24. That apart, there is material on record in the form of Ex.R.9 – Resignation Letter dt.01.11.2017 of Sri K. Venkateshwarlu resigning to the post of General Secretary, so that election could be held on 01.11.2017.

25. Having resigned as General Secretary of the Union on 01.11.2017, the said K. Venkateshwarlu ceased to be the General Secretary of the Union and could not have called for any General Body meeting of the Union on 22.03.2018, *prima facie*. When the said K. Venkateshwarlu had no *prima facie* capacity to call for such a meeting, the decisions taken in the meeting held on 22.03.2018 to remove the petitioner or to make respondent nos. 1 and 2 as President and General Secretary are *prima facie* invalid.

26. Neither the Trial Court nor the lower Appellate Court bestowed any attention to this critical aspect of the matter, i.e., whether the General Body meeting held on 22.03.2018 which was convened by K. Venkateswarlu had any legal sanctity or not. Both the Courts below got carried away by the observations made in Ex.P.4 – Letter of the Deputy Commissioner of Labour.

27. Instead of focusing on the *prima facie* case of respondent nos.1 and 2 for grant of injunction relief, the courts below focused on what the petitioner is alleged to have done and have thus misdirected themselves.

28. In **Kashi Math Samsthan and another vs. Srimad Sudhindra Thirtha Swamy and another**¹, the Supreme Court held that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a *prima facie* case to go for trial, balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. It observed that it is equally well-settled that when a party fails to prove *prima facie* case to go for trial, question of considering balance of convenience or irreparable loss and injury to the party concerned, would not be material at all. It explained that if that party fails to prove *prima facie* case to go for trial, it is not open to the Court to grant injunction in his favour even if he has made out a case of balance of convenience being in his favour, and on ground that he would suffer irreparable loss and injury, if no injunction order is granted.

29. In my considered opinion, the respondent nos.1 and 2 have not made out any *prima facie* case for grant of interim injunction under Order XXXIX Rules 1 and 2 of Civil Procedure Code, 1908, and therefore, the Trial Court as well as the Appellate Court erred in granting relief to respondent nos.1 and 2.

30. Accordingly, the Civil Revision Petition is allowed. The order dt.11.06.2019 passed in Civil Miscellaneous Appeal No.18 of 2018 on the file of the Principal District Judge, Medak, at Sangareddy as well

¹ A.I.R. 2010 Supreme Court Pg.296

as the order dt.12.06.2018 passed in Interlocutory Application No.551 of 2018 in Original Suit No.112 of 2018 on the file of the Senior Civil Judge, Medak, at Sanga Reddy are both set aside; and Interlocutory Application No.551 of 2018 is dismissed.

31. It is made clear that observations made herein are only for the purpose of deciding this Civil Revision Petition; and the Trial Court shall decide the suit uninfluenced by any observations made by it in its order dt.12.06.2018 passed in Interlocutory Application No.551 of 2018 or order dt.11.06.2019 passed in Civil Miscellaneous Appeal No.18 of 2018 on the file of the Principal District Judge, Medak, at Sangareddy or any observations made in this order by this Court.

32. Accordingly, the Civil Revision Petition is allowed as above.
No order as to costs.

33. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 14.08.2019

Ndr/*