

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-31303-2019

Date of Decision:-23.01.2020.

Mukesh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR

Argued by:- Mr. Sunil Kumar Nehra, Advocate for the petitioner.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

Mr. R.K. Gupta, Advocate for respondent Nos.4, 6 and 8 to 11.

Mr. Rohit Jindal, Advocate for respondent Nos.7 and 12.

SANJAY KUMAR, J. (Oral)

The petitioner is a member of All Escorts Employees Union, respondent No.4 herein. He assails the election result dated 26.05.2017, declared on 27.05.2017 (Annexure P-6), in relation to the office-bearers of the said Union, on the ground that the said election was held in violation of the edict laid down by a learned Judge of this Court *vide* order dated 7.10.2014 in ***CWP-16228-2002***, titled **All Escorts Employees Union Vs. State of Haryana and others**, which was confirmed on 20.04.2015 in ***LPA-568-2015***, titled **All Escorts Employees Union Vs. State of Haryana and others**, and was thereafter confirmed by the Supreme Court on 14.09.2015 in

Civil Appeal Nos.12843-12844-2017, titled **All Escorts Employees Union**

Vs. State of Haryana and others. He also seeks a direction to the authorities to ensure that elections are held afresh without including the employees of Yamaha Motor India (Private) Limited, in keeping with the aforestated judicial decisions.

The admitted facts, relevant for the purposes of this adjudication, are as follows:- All Escorts Employees Union (hereinafter, 'the Union') is a registered Trade Union in the State of Haryana. As per Clause 4 of its Constitution, any worker employed in any Escorts concern at Faridabad was entitled to become its member and an employee who left the job of any Escorts concern at Faridabad ceased to be a member of the Union. Hitherto, the concern named Yamaha Motors Escorts Limited was under the joint control of Yamaha Motor Company, Japan, and Escorts Limited, India. However, in 2001, Yamaha Motor Company, Japan, acquired the total shareholding in this concern and a new company, viz., Yamaha Motor India (Private) Limited came into existence. In consequence, the two plants of Yamaha Motors Escorts Limited at Surajpur and Faridabad ceased to be under the control of Escorts Limited, India. The employees of these two plants became the employees of Yamaha Motor India (Private) Limited.

While so, the Union held a General Body Meeting on 16.06.2001 and resolved that Clause 4 of the its Constitution, relating to membership, should be amended so as to permit inclusion of workers of industrial units which were originally established by Escorts Limited, India. The Union thereupon made an application on 25.06.2001 to the Registrar of Trade Unions, Haryana, to accept and register the aforestated amendment. However, by order dated 28.08.2002, the Additional Registrar-cum-Joint Labour Commissioner, Haryana, rejected the request of the Union. Aggrieved

thereby, the Union filed CWP-16228-2002 before this Court. The said writ petition was dismissed by a learned Judge on 7.10.2014 and the said dismissal stood confirmed in appeal, in LPA-568-2015, on 20.04.2015. The Union chose to approach the Supreme Court assailing the correctness of the orders passed by this Court, culminating in the dismissal of its LPA No.568-2015 on 20.04.2015. However, the Supreme Court also dismissed its appeal, *vide* judgment dated 14.09.2017 passed in Civil Appeal Nos.12843 and 12844 of 2017.

While so, in the year 2007, during the pendency of CWP-16228-2002, the Union again went before the Labour Commissioner-cum-Registrar, Trade Unions, Haryana, suppressing the earlier rejection *vide* order dated 28.08.2002, and obtained approval of the very same amendment which was rejected earlier. However, upon being apprised of the same, the Labour Commissioner-cum-Registrar, Trade Unions, Haryana, passed order dated 21.10.2015, withdrawing and cancelling the approval granted on 27.11.2007.

Despite the aforestated circumstances, the Union issued notice dated 16.05.2017 permitting employees of the Yamaha Units at Faridabad and Surajpur to cast their votes in the election to the posts of office-bearers of the Union, which was scheduled to be held on 26.05.2017. Pertinent to note, the Assistant Labour Commissioner, Circle-I, Faridabad, addressed letter dated 19.05.2017 to the Union, referring to the orders passed by the Court, and cautioning the Union that the election would be treated as unlawful. The Union however went ahead with the election on 26.05.2017 and employees of Yamaha Motor India (Private) Limited were also allowed to participate. At this stage, it may be noted that the employees of Yamaha India Motor India (Private) Limited formed their own Union, viz., All India Yamaha

Motor Employees Sabha and got it registered with the authorities.

Having held the said election in 2017, the Union did not resort to holding a fresh election after completion of the two-year term of the elected office-bearers. In this regard, the Labour Commissioner, Haryana, addressed letter dated 18.07.2019 to the Union, directing it to hold an election afresh. However, no steps were taken pursuant thereto. The Labour Commissioner, Haryana, again addressed letter dated 13.09.2019 to the Union, pointing out that the term of the elected office-bearers had expired and directed it to conduct an election immediately. The Labour Commissioner also cautioned that if the Union did not do so, proceedings would be initiated for cancellation of the registration of the Union.

It is in this factual matrix that the petitioner seeks relief by way of this writ petition.

The Joint Commissioner, Haryana, filed a written statement on behalf of the authorities, viz., respondent Nos.1 to 3. Therein, she affirmed that the election held on 26.05.2017 was for a period of two years only and asserted that the same was evident from the election notice dated 17.05.2017 issued by the Chief Election Officer. She further stated that participation of the employees of Yamaha Motor India (Private) Limited in the said election vitiated it, as they were not entitled to continue as members of the Union after rejection of the proposed amendment of Clause 4 of the Union's Constitution. She affirmed that the Union was called upon by letters dated 18.07.2019 and 13.09.2019 to conduct the election immediately in accordance with its Constitution. She stated that the plea of the Union that its Constitution had been amended, whereby the elected term of office-bearers was extended to three years, was liable to be rejected as the election

held in May, 2017, was specifically for a period of two years.

A written statement was filed by the Union and some of the elected office-bearers, stating as follows:-

The petitioner had no *locus* to maintain this writ petition as his membership was terminated. The election held on 26.05.2017 was not illegal as there was no Union in existence in Yamaha Motor India (Private) Limited at Faridabad as on that date. Consequently, employees of that Unit continued to be members of the Union and they contested and participated in the election held on 26.05.2017. They further stated that Clause 21 of the Union's Constitution was amended, whereby the tenure of the office-bearers of the Union was enhanced from two years to three years. This amendment was stated to have been submitted to the authorities under letter dated 04.02.2010.

At the outset, it may be noted that the present writ petition was filed in October, 2019, but there is no material forthcoming as to when the Union membership of the petitioner was terminated. Admittedly, a show-cause notice in this regard was issued to him only in September, 2019. Therefore, at the time of institution of this case, the petitioner seems to have been a member of the Union. He therefore had the *locus standi* to maintain this writ petition. The contention to the contrary is accordingly rejected.

Insofar as the merits of the case are concerned, there is no getting over the fact that the endeavour and attempt made by the Union to amend the membership clause in its Constitution so as to include employees of Yamaha Motor India (Private) Limited came to naught, as the cases filed by it before this Court and thereafter, the Supreme Court, were dismissed on merits.

Having suffered these adverse orders, the Union still chose to proceed with

the election in May, 2017, in utter disregard of and contrary to the said orders. There is no justification or explanation forthcoming as to why the Union chose to do so and as to how it seeks to sustain the same at this stage. Significantly, the move made by the Union to surreptitiously secure approval of the very same amendment which was rejected earlier also came to naught when the said approval was cancelled and withdrawn in the year 2015. Therefore, holding of the election by the Union on 26.05.2017, treating the employees of Yamaha Motor India (Private) Limited as its members, cannot be countenanced. Having held that illegal election, the Union now wishes to continue the illegality by claiming that the tenure of the elected members would be for three years, whereby they would continue till May, 2020.

However, as pointed out by the State authorities, the election held in May, 2017, was categorically for a period of two years and no more. There is no indication of the so-called amendment of the year 2010 having been accepted and approved. Further, there is no explanation as to why the Union held the election for a period of two years in the year 2017 if such an amendment had been effected in the year 2010 itself. In any event, when the very holding of the election in May, 2017, was unsustainable in law, owing to participation of the employees of Yamaha Motor India (Private) Limited, in flagrant violation of the judicial orders suffered by the Union, the question of permitting it to claim any rights in relation to the said election does not arise. Further, this Court cannot permit the Union to claim at this stage that the said elected body should be permitted to continue. The said elected body cannot be permitted to continue to function even for a day, as the very inception of the body is mired in illegality.

The writ petition is accordingly allowed declaring the election held on

26.05.2017 to be utterly illegal. The Union is directed to forthwith hold an election strictly in accordance with the decision of the Supreme Court in Civil Appeal Nos.12843-12844-2017, titled **All Escorts Employees Union Vs. State of Haryana and others**, and as per due procedure. The State authorities, viz., respondent Nos.1 to 3, shall ensure that the Union immediately initiates steps in this regard and that the elected body of May, 2017, is not permitted to operate or transact any business, be it with the authorities or with Escorts Limited, India, in the interregnum.

No order as to costs.

(SANJAY KUMAR)
JUDGE

January 23, 2020.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.