

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

C.O. No. 1227 of 2021

(Via video conference)

**South Eastern Railway
Mens Congress
-Vs.-
Abhisek Debnath & Ors.**

Mr. Aniruddha Chatterjee,
Mr. Amal Kumar Saha
...for the petitioner

Mr. Partha Pratim Roy,
Mr. Rajdeep Bhattacharya
...for the opposite party no. 1

Mr. Tanmoy Mukherjee
...for the opposite party nos. 2 to 7

The petitioner has challenged an order whereby the appellate court refused to grant stay of operation of an order whereby the trial court had not only granted an injunction restraining the present committee of the petitioner-union from functioning, but directed formation of an *ad hoc* committee for looking after such functioning.

Learned counsel appearing for the petitioner, as supported by learned counsel appearing for the opposite party nos. 2 to 7, submits that the direction to form an *ad hoc*

committee was entirely beyond the reliefs sought by the plaintiff in the suit and could not be granted at the injunction stage in any event. That apart, by placing reliance on the documents annexed to the present revisional application, learned counsel harped on the contention that the allegations made in the suit, regarding alleged irregularities in the holding of election, had no basis.

It is argued, by placing reliance on the minutes of the meetings dated March 20, 2020 and March 21, 2020, that one of the grounds of challenge to the election, being that the defendant nos. 1 to 6 (opposite party nos. 2 to 7 herein), could not have been participated in the election and/or selected for any of the posts of office bearers in view of non-renewal of their membership, is belied by such minutes. By placing specific reliance on Item No. 4 of the said minutes, it is categorically submitted that defendant nos. 1 to 6 had admitted that the last working committee meeting before the purported elections was held on February 24 and February 25 of 2020 at Bokaro Steel City.

It is further contended, by placing reliance on the annexures to the revisional application,

that the said meeting held on February 24 and February 25, 2020 had indeed accepted the defendant nos. 1 to 6 and renewed their term for a further two years with effect from the date of expiry of the previous term.

However, learned counsel appearing for the opposite party no. 1 contends that the letter written by the defendant no. 1 itself contradicts that there was any agenda for renewal of the tenures of defendant nos. 1 to 6 in respect of the meeting held on February 24 and February 25, 2020. As such, it is argued that there could not have been any such extension at the relevant point of time.

That apart, it is contended by opposite party no. 1 that the Constitution of the Union-in-question was itself violated, insofar as Clause 7(8) of the said Constitution, annexed at page 58 of the revisional application, which clearly provides that the General Council or the Working Committee meeting held just before the Biennial General Meeting shall fix the date, the venue and the details of the Biennial General Meeting. It is argued that, as reflected even from the copy of such purported minutes relied on by the defendant nos. 1 to 6, there was no such fixation

of date, time and venue, let alone details of the general meeting which was to follow.

From the records, it appears that the relevant communications relied on by both the parties, particularly the letter dated May 22, 2020, clearly indicate that, in view of the pandemic situation, the meeting was held virtually. The finding of the trial court regarding the purported minor discrepancy due to alleged admission of the defendants that there was both virtual and physical meeting, is irrelevant for the purpose of considering as to whether, *prima facie*, the provisions of the Constitution of the Union were violated.

That apart, the balance of convenience and inconvenience was in favour of refusing to grant injunction regarding the functioning of the committee, since such an injunction would stall even the routine work of the Union, thereby directly affecting the rights of the members thereof.

Moreover, it is found from the trial court's order, which was impugned before the appellate court and stay of operation of which was refused, that the trial court directed an *ad hoc* committee to be formed. Such formation of an *ad hoc*

committee was a third case made out by the trial court and beyond the reliefs sought either in the suit or in the injunction application. Moreover, the concept of such formation of *ad hoc* committee does not find place within the four corners of the Constitution of the Union.

It is pointed out by both the parties that, at an ad interim stage, a co-ordinate Bench of this Court was pleased to fix an ad interim arrangement whereby the present elected committee would continue its functioning, but the defendant nos. 1 to 6 shall be restrained from participating therein. Such interim arrangement appears to be reasonable to this Court as well, since staying the entire functioning of the elected committee would bring the representation of the Union and its daily functioning to a staggering halt. Hence, the appellate court ought to have taken into consideration the above factors while refusing to grant stay of operation of the impugned order.

The judgments relied on before the appellate court primarily pertained to prohibitory injunctions. In the event a restraint order is stayed at the inception of the appeal preferred against it, the same would tantamount to

allowing the appeal by permitting the restrained parties to carry on the activities, from which they restrained. However, in the present case, the trial court not only passed an order of prohibitory injunction, which would stall entire functioning of the Union, but it has directed an *ad hoc* committee to be formed, which was of a positive nature by way of a mandatory direction. Hence, the ratio laid down in the judgments cited before the appellate court are not applicable to the present case.

Moreover, the *prima facie* case made out by the plaintiff has to stand on a much stronger footing for the courts to interfere with the internal affairs of an elected body or association at a preliminary stage of the suit.

In such view of the matter, C.O. No. 1227 of 2021 is disposed of by modifying the impugned order dated April 27, 2021, passed by the District Judge at Alipore, District-South 24-Parganas, to the extent that the operation of the order dated March 24, 2021, passed by the Civil Judge (Senior Division), Sixth Court at Alipore, District-South 24-Parganas in Title Suit No. 676 of 2020, shall remain stayed, with the rider that the defendant nos. 1 to 6 shall not participate in the

functioning of the newly elected union/ committee, till disposal of Misc. Appeal No. 84 of 2021. However, the portion of the trial court's order, whereby an *ad hoc* committee was formed, shall remain stayed till disposal of the miscellaneous appeal. It is further clarified that the regular functioning of the last-elected committee, barring defendant nos. 1 to 6 (opposite party nos. 2 to 7 herein), shall continue as usual, of course, subject to the result of the miscellaneous appeal.

The ends of justice would be sub-served if the appellate court is directed to dispose of the appeal expeditiously. Hence, the transferee court, to where the appeal, bearing Miscellaneous Appeal No. 84 of 2021, has now been allocated, or the court in charge of the same, as the case may be, shall positively take up Misc. Appeal no. 84 of 2021 for final hearing on the next date fixed by the appellate court and shall conclude the hearing and dispose of the appeal finally within a fortnight therefrom.

It may be noted that the findings and observations made above were arrived at for the limited purpose of deciding the present revisional application and shall not influence the appellate

court or the trial court in any manner at any further stage of the appeal/suit. The courts below shall adjudicate the matters, sub judice before them respectively, independently on their own merits, without being so influenced.

The courts below as well as the parties shall act on the written communication of the learned advocates for the parties, to be accompanied by a server copy of this order, without insisting upon prior production of certified copy thereof.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)