

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

IA No. CAN 2 of 2022

in

W.P.A 9676 of 2022

Ordinance Factories Permanent workers Union & Ors.

vs.

The Union of India & Ors.

For the petitioners	:	Mr. Jagadish Ranjan Das, Adv.
For the added respondent	:	Mr. Kalyan Banerjee, Sr. Adv. Mr. Suman Sengupta, Adv. Mr. Dipjyoti Chakraborty, Adv.
For the respondent Nos. 1 to 5	:	Mr. Bikash Ranjan Bhattacharya, Sr. Adv. Ms. Susmita Saha Dutta, Adv.
For the State	:	Mr. Jishnu Choudhuri, Sr. Adv. Ms. Amrita Panja Moulick, Adv.
Last Heard on	:	11.11.2022.
Delivered on	:	17.11.2022.

Moushumi Bhattacharya, J.

1. The added respondent to the writ petition, namely, one Rakesh Kumar Singh, has filed this application for vacating of an order passed by this Court on 9.6.2022 and recalling the same as by the said order, the result of the election of the Works Committee for 2022-2024 of the Metal and Steel Factory, Ishapore was directed not be announced until the respondents in the writ petition filed their instructions in the form of a Report within the specified period of time. The applicant claims to be a workman who contested the Works Committee election by filing nomination papers. The applicant is aggrieved by the order dated 9.6.2022 on several grounds stated in the application.

2. The primary ground urged by the learned counsel appearing on behalf of the applicant/added respondent is that the writ petition is premature since the Notification for the Works Committee election dated 7.5.2022 for constituting a fresh Works Committee for two years under the Industrial Disputes (Central) Rules, 1957, sets out a schedule of the election programme where a candidate would first have to file nomination papers and only afterwards be allotted an election symbol. According to counsel, the petitioners did not file nomination papers and instead came to the Court for relief on the ground of having been denied an election symbol. Counsel relies on the timing of the writ petition where the prayer for stay of the election process was made one day before the election; the order was passed on 9.6.2022 and the election was held on 10.6.2022. Counsel also submits that the petitioners approached the General Manager of the Metal and Steel Factory, Ishapore on 5.5.2022 for allotment of a

symbol for the election whereas the General Manager did not have any power to grant such symbol.

3. Learned counsel appearing for the other added respondents adopts the submission made on behalf of the applicant and urge that the interim order should be vacated.

4. Learned Counsel appearing for the Registrar of Trade Unions relies on the provisions of the Industrial Disputes Act, 1947 and the Rules framed under the said Act which permits participation of any trade union in any election for the Works Committee. Counsel submits that the Registrar of Trade Unions does not have any role to play in relation to such election. Counsel submits that contrary to the allegations made by the petitioners, the Registrar gave two replies dated 25.11.2021 and 24.6.2022 to the petitioners bringing on record that the petitioner no. 1 Union failed to submit annual returns to the Registrar of Trade Unions for at least the last two years. Counsel submits that the failure to file annual returns is in violation of section 28 of The Trade Unions Act, 1926.

5. Learned counsel appearing for the writ petitioners urge that the interim order for stay on publishing the result of the election should be confirmed. Counsel submits that the petitioners approached the General Manager of the Steel Factory through several representations but were not given any response to the same. Counsel submits that the denial of an opportunity to participate in the Works Committee Election amounts to infringement of the fundamental rights of the petitioners.

6. The schedule of the election programme published by way of the Notification dated 7.5.2022 shows that the date of filing of nomination papers was scheduled from 23.5.2022 to 26.5.2022. The last date for submission of nomination papers was to end at 4 pm on 26.5.2022. 27.5.2022 was fixed for scrutiny of the nomination papers and 30.5.2022 was to be the last date for withdrawal of nomination papers, before 4 p.m. The date for allotment of symbols was fixed on 31.5.2022. It is clear from the schedule that allotment of symbols was to come several stages after filing of nomination papers. Hence, a candidate would first have to file his/her nomination papers and then only be considered for allotment of symbol after the nomination papers were scrutinised and withdrawn (if such a situation arose). The schedule of the election programme thus indicates that the petitioners sought for an election symbol before and even without filing their nomination papers.

7. The relevant dates would also show that the petitioners approached the General Manager, Metal and Steel Factory, Ishapore on 5.5.2022 for allotment of a symbol from the two proposed symbols indicated in the said letter. First, the time for allotment of symbol did not come as on 5.5.2022 as would be indicated from the schedule and second, the General Manager did not have the power to allot any such symbol to the petitioners not being the designated authority for such. Under Rule 9 of the Notification dated 7.5.2022 issued under the Industrial Disputes (Central) Rules, 1957, request for allotment of symbols may be made in writing to the Returning Officer by the Unions or candidate after filing nomination papers but not later than 4 p.m. of 31.5.2022. Significantly, the petitioners were aware of the Notification dated 7.5.2022

(annexed to the application) but failed to take any steps under Rule 9 of the Notification by approaching the Returning Officer for allotment of symbol. Of more significance is the fact that the petitioners filed the writ petition on 23.5.2022 which was before the last date for filing of nomination papers (26.5.2022 under the Notification of 7.5.2022). Hence, the petitioners had sufficient time to file their nomination papers and follow the sequence of the schedule for allotment of symbol. On the date when the writ petition was moved and the order obtained without the contesting candidates who were subsequently added as party respondents, the petitioners did not make out a case of being denied the right to participate in the elections by filing their nomination papers.

8. Going by the aforesaid dates, this Court is therefore constrained to hold that the petitioners did not have a crystallised grievance of breach of any of the fundamental rights guaranteed under the Constitution of India as on the date of filing of the writ petition. Moreover, the timing of the prayer for stay on the election is a vital factor in deciding whether the interim order should continue. The petitioners were aware that the election and counting of votes was scheduled on 10.6.2022. The writ petition was filed during the window of filing of nomination papers which the petitioners abstained from doing for reasons unknown; the matter was moved just one day before the election and the petitioners sought for stay of the election process. The conduct of the petitioners in failing to place the sequence of the schedule particularly for allotment of symbols is a further reason to revisit the interim order. The case sought to be made against the Registrar of Trade Unions is also belied from the

Report filed by the latter. The fact that the petitioners failed to file their annual returns to the Registrar of Trade Unions in terms of the statutory requirement under The Trade Unions Act, 1926 together with the fact that the Registrar of Trade Unions brought the same on record by its replies of 25.11.2021 and 24.6.2022 was also not before the Court on the day when the interim order was passed.

9. This Court is hence inclined to accept the submission made on behalf of the respondents / added respondents for having the interim order vacated. It should however be clarified that the point of alternative remedy taken on behalf of the added respondents is not tenable. Under Rule 13 of the Notification dated 7.5.2022, an unsatisfied candidate can appeal to the Appellate Authority within 1 hour of the decision or before the next process in the election. The decision must be relevant to the election process. In the present case, the petitioners have not come against any “decision” as such but against the alleged inaction on the part of the General Manager of the Steel Factory and the Registrar of Trade Unions. Rule 13 therefore does not have any application in the present case.

10. The other point of the petitioners availing of the right of filing an election petition is also to be rejected since an election petition can only arise when the validity of an election has been questioned and the election petitioner asks the Court to resolve the factual disputes raised in the election petition. Since the petitioners came to the Court at the stage of filing of nomination papers the question of filing an election petition does not arise. In this context, the

reference placed by the respondents of *West Bengal State Election Commission vs. Communist Party of India (Marxist)*; (2018) 18 SCC 141 and *Indrajit Barua vs. Election Commission of India*; (1985) 4 SCC 722 is misplaced as both these decisions dealt with the circumstances for filing of an election petition.

11. As has been settled in several decisions of the Supreme Court, the right to vote or participate in an election is not an absolute right and is also not a fundamental right under the Constitution of India or even a common law right which a candidate or an intending voter may bring to the Writ Court for adjudication. The right to vote and contest an election is purely a statutory right governed by the relevant act and the rules framed thereunder;. The right to contest an election and to vote can always be restricted or abridged by the prescribed statute or rules and regulations framed thereunder. Ref. *Supreme Court Bar Association vs. B.D. Kaushik*; (2011) 13 SCC 774

12. Having regard to the reasons as stated above, this Court is not inclined to continue or confirm the interim order passed on 9.6.2022. In any event, the interim order was limited to a stay on declaration of the result of the election. The interim order was also directed to be in place until the respondents filed their respective reports. Since all the reports and affidavits have been filed by the respondents before the Court, there is no further justification in continuing the interim order. The practicality of the situation also demands that the result of an election held on 10.6.2022 be declared so that the candidates can follow the procedure laid down in the rules and Notification. Arresting the process of an election where the Court has come to a finding that the petitioners do not

have a case to claim for such, would result in injustice to all the parties who have followed the procedure for the Works Committee Election. The election hence needs to be unshackled from the hold of the interim order.

13. CAN 2 of 2022 is accordingly allowed. The interim order dated 9.6.2022 is vacated. Since the Court has come to a finding that the petitioners did not have a cause of action on the date of filing of the writ petition and since the respondents have filed their respective pleadings to the writ petition and all the points in the writ petition have been dealt with in such affidavits, nothing further remains to be decided in the writ petition. WPA 9676 of 2022 is accordingly dismissed without any order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)