

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.7.2007

CORAM:

THE HONOURABLE MR. JUSTICE P. JYOTHIMANI

W.P.No.21546 of 2007
and M.P.Nos.1 and 2 of 2007

EID Parry Labour Union
rep. by its General Secretary
T.Velayudham
Reg.No.340/SAT
Main Road, Nellikuppam-607 105.
Cuddalore District. Petitioner

.Vs.

1.The Registrar of Trade Unions
Deputy Commissioner of Labour II
DMS Complex, Teynampet
Chennai-600 006

2.EID Parry India Ltd.,
rep. by General Manager
Nellikuppam
Cuddalore District -607 105

3.K.Adinarayanan Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records on the file of the first respondent bearing No.C1/9025/2006 dated 22.12.2006 and quash the same and consequential direction to declare the petitioner union as the duly elected union.

For Petitioner : Mrs.A.V.Bharathi
For Respondents
for R2 : Mr.John for M/s.T.S.Gopalan&Co.

for R3 : Mr.C.K.Chandrasekar for
M/s.Row and Reddy

for Respondent for R1 : Mr. M. R. Jothimanian GA

O R D E R

The writ petition has been filed challenging the proceedings of the first respondent dated 22.12.2006, in and by which the first respondent by conducting enquiry in respect of the dispute between the first and third respondent has directed the parties to approach the civil court to decide as to who are the duly elected office bearers of EID Parry Labour Union, Nellikuppam, Cuddalore District. As against the said order of the first respondent, the petitioner has filed the present writ petition.

2. It is the case of the petitioner that the union election for the petitioner's Union was held on 4.12.2005, in which, the third respondent was elected as a President and that notification as per the bye-law of the Union is for a period of three years. The petitioner's case is that inspite the third respondent being elected as a President, he has not taken effective steps for convening the Joint Committee Meeting for the purpose of introducing the newly elected office bearers to the Management. Subsequently also, a meeting was called on 19.1.2006 and 9.2.2006, in which, the third respondent being the President has failed to participate. In view of the same, a General Body Meeting was convened on 13.4.2006. It is the case of the petitioner that the General Body Meeting which held on 13.4.2006 decided to hold the election of the office bearers and the election schedule was drawn up and the election was scheduled to be held on 29.4.2006 and the last date for filing nomination was on 25.4.2006. As there was no contest, all the office bearers and E.C. Members were elected unanimously, in which the petitioner was elected as a General Secretary and the result of the said election was communicated to all the Labour Commissioner and other officers including the employer. It is also the case of the petitioner that in the mean time, those members of the union along with second and third respondents have approached the civil court by filing O.S.21 of 2006 challenging the election process. Ultimately, the said suit came to be dismissed as withdrawn on 20.7.2006.

3. According to the petitioner, the elected members who got elected in the election held on 25.4.2006 were not permitted to take charge and function as office bearers of the Trade Union because of the rival factions and other disputes. The petitioner has approached the first respondent for deciding the dispute. The first respondent, Registrar of Trade Unions has taken up the dispute between the petitioner and the third respondent and after conducting elaborate enquiry and going through the entire records, passed the impugned order directing the parties to approach the civil court to decide as to who are the properly elected office

bearers of the union. The first respondent relied upon the judgment of this court in 1988 (2)LLJ P.335 in ONGC Workmen's Association Vs. State of West Bengal and others.

4. Mrs.A.V.Bharathi, learned counsel for the petitioner vehemently contended that once the first respondent, Registrar of Trade Unions ceased of the dispute between the petitioner and the third respondent, it is the duty on his part to decide the issue relating to the holding of the election as per Section 28 of the Trade Union Act. She would also submit that the petitioner has substantiated his stand by producing various records regarding the election conducted by the group on 25.4.2006, which was conducted in accordance with law and the first respondent had a legal obligation to accept the same and recognise the election of the petitioner. The conduct of the first respondent in relegating the powers to the civil court is the failure on his duty vested on the first respondent. On the other hand, Mr.Chandrasekar, learned counsel for the third respondent contended that there is a dispute involved in the present case in respect of the same union and in which the petitioner and the third respondent claiming for the office bearership. Admittedly, the third respondent was elected as a President in the election dated 4.12.2005 which is for a period of three years and it is the duty of the petitioner to explain how subsequent election was held on 25.4.2006. Therefore, according to the learned counsel for the third respondent, the dispute regarding election on 25.4.2006 between the parties cannot be decided by the Registrar of Trade Unions either under Section 18 or 28 of the Trade Union Act.

5. I have heard Mrs.Bharathi, learned counsel for the petitioner, Mr.John, learned counsel for the second respondent employer and Mr.Chandrasekar, learned counsel for the third respondent. I have also perused the entire records.

6. Admittedly, in the election held on 4.12.2005, the third respondent was elected as the President of the Union. It is the case of the petitioner that the General Body meeting was conducted on 13.4.2006 for the purpose of conducting election and the election was fixed on 29.4.2006. On the last day for filing nomination i.e. On 25.4.2006, there was no contest and there was unanimous decision for all the office bearers of the petitioner union, in which, the third respondent was not elected. Therefore, when the dispute was referred to the first respondent, Registrar of Trade Unions, as it is seen on record that the first respondent had taken steps to resolve the dispute amicably. However, when he came to the conclusion that there was no possibility of settlement between the parties, he has stated that the dispute can only be decided by the civil court.

7. Mr.Chandrassekar, learned counsel for the third respondent also brought to the notice of this court that subsequently a suit was filed before the Subordinate Judge, Banruti in O.S.31 of 2007, on behalf of EID Parry Labour Union, rep. by its President in which the present petitioner is the first defendant and the issue involved in that suit is about the Subscription amounts collected from the office bearers of the union. A reference to the above said suit shows that even though the suit is filed for recovery of an amount by plaintiffs, it is stated that defendants 1 and 2 therein have retained the union members subscription fees and hence the plaintiffs also sought for injunction against the defendants from operating the S.B. Account of the E.I.D.Parry Labour Union, Nellikuppam. A reading of the plaint shows that the suit is filed for recovery of amount which represents the subscription amounts collected from the employees. The decision in the suit also involves incidentally as who is entitled to collect and hold subscription of the Trade Union. Therefore, as contended by the learned counsel for the third respondent, a decision has to be arrived at as to who is the legally elected office bearer of the union.

8. Admittedly, the petitioner herein has taken notice in the suit. Therefore, I do not see any reason for the petitioner to challenge the order of the first respondent. The learned counsel for the third respondent also would submit that the third respondent continues to be the President of the Union and in fact at his instance, settlement was arrived between the union and the management, the second respondent, and the petitioner is also receiving the benefits of the settlement. A reference to Section 28 of the Trade Union Act shows that it contemplates the power of the Registrar to receive the entire returns. Section 28 states as follows:-

"28.Returns- (1)There shall be sent annually to the Registrar, on or before such date as may be prescribed, a general statement, audited in the prescribed manner, of all receipts and expenditure of every registered Trade Union during the year ending on the 31st day of (December) next preceding such prescribed date, and of the assets and liabilities of the Trade Union existing on such 31st day of (December). The statement shall be prepared in such form and shall comprise such particulars as may be prescribed

(2)Together with the general statement there shall be sent to the Registrar a statement showing all changes of (office bearers) made by the Trade Union during the year to which the general statement refers, together also

with a copy of the rules of the Trade Union corrected upto the date of the despatch thereof to the Registrar.

(3) A copy of every alteration made in the rules of a registered Trade Union shall be sent to the Registrar within fifteen days of the making of the alteration.

(4) For the purpose of examining the documents referred to in sub-sections (1), (2) and (3), the Registrar, or any officer authorised by him, by general or special order, may at all reasonable times inspect the certificate of registration, account books, registers, and other documents, relating to a Trade Union, at its registered office or may require their production at such place as he may specify in this behalf, but no such place shall be a distance of more than ten miles from the registered office of a Trade Union."

Therefore, the reference to the said Section shows that it is not the jurisdiction vested with the Registrar of the Trade Union to decide the dispute between the two rival groups of the Trade Union. The contention raised by the learned counsel for the petitioner that under Section 18, there is immunity from civil suit has no application on the facts of this case since it bars suits only in respect of settlement of disputes through unions regarding the service conditions and the contract of employment. Whereas in cases of dispute between rival groups of a Trade Union, as to who is the properly elected office bearer, it is the civil court which alone can decide on appreciation of evidence.

9. This court while deciding about the scope of the Registrar of Trade Unions, under Section 28 of the Trade Union Act about the right of a person to represent the union, in Kovai Periyar Maavatta Dravida Panchalai Thozhilalar Munnetra Sangam (rep. By its General Secretary S.Doraisamy), Coimbatore Vs Commissioner of Labour (Registrar of Trade Unions), Chennai and others reported in 2003 (4) LLN 115 has held that Section 28 of the Trade Union Act does not confer any quasi-judicial power to the Registrar of Trade Union to decide the dispute between the rival claims and such decision could be decided only by a civil court. The relevant portion in the above said judgment rendered by P.K.Misra, J is as follows:

"It is now well settled that the provisions contained in S.28 of the Trade Unions Act do not confer any quasi-judicial power to decide the dispute between the rival claimants and even if any decision is taken, such a decision does not have any binding force and the dispute between the rival claimants in a trade union can be decided by a civil Court. Such view has been expressed

in R.Murugesan Vs. Union Territory of Pondicherry (1976-II L.L.J.435) Similar views have been expressed in Fateh Singh Solanki and others Vs. Rastriya Mill Mazdoor Sangh and others (1993 (2) L.L.N.947) Ratan Kumar Dey and others (Union of India and others (1991 (2)L.L.N.506) Bokaro Steel Workers Union and another Vs. State of Bihar and others (1995(1)L.L.N.1079) "

10. The first respondent while passing the impugned order, has relied upon the judgment reported in 1988 (2)LLJ P.335 in ONGC Workmen's Association Vs. State of West Bengal and others. That case was also relating to election dispute raised under Section 8 and 28 of the Trade Union Act. The Calcutta High Court held that the Registrar, under section 8 and 28 of the Act is not performing the quasi-judicial power and therefore, he cannot be allowed to conduct enquiry about the dispute between the Trade Union. While deciding about the scope of Section 8 and 28, the Calcutta High Court held that the power of Registrar is restricted to ascertain as to who are the elected office bearers to register their names within the scope and ambit of Section 8 and 28 of the Trade Unions Act and that apart, he cannot decide the validity or otherwise of the election. The relevant paragraph is extracted below:-

"...True, the Registrar has power to ascertain who are the elected office bearers to register their names within the scope and ambit of Sections 8 and 28 of the Trade Unions Act. The scope of inquiry to be held within the scope of such provision of law is very much limited. Any order passed by him must be administrative in nature. He is not deemed to be a quasi-judicial authority to decide any disputed question of fact or law. He has no authority to ask any of the parties to lead evidences and to give opportunity to the other party to cross-examine any witness. Under this concept of a limited administrative inquiry, the dispute as raised by the rival parties cannot be set at rest...."

11. Therefore, looking it at any angle, I do not find any infirmity or illegality in the order of the first respondent in directing the parties to approach the civil Court to decide the dispute among themselves. In view of the same, the writ petition fails and the same is dismissed. However, it is made clear that if the petitioner or any of the parties approach the civil court regarding the validity or otherwise of the election of the Trade Union office bearers, the civil court shall consider the nature of the case and dispose of the same as expeditiously as possible.

No costs. Consequently, connected miscellaneous petitions are closed.

nvsri

Sd/
Asst.Registrar

/true copy/

To

Sub Asst.Registrar

1.The Registrar of Trade Unions
Deputy Commissioner of Labour II
DMS Complex, Teynampet
Chennai-600 006

2.The General Manager
EID Parry India Ltd.,
Nellikuppam
Cuddalore District -607 105

+ 1 cc to M/s. A. V. Bharathi, Advocate, SR No.47390/07

+ 1 cc to the Government Pleader, SR No.47606/07

+ 1 cc to M/s. T. S. Gopalan & Co, Advocate, SR No.47575

+ 1 cc to M/s. Row and Reddy, Advocate, SR No.47591/07

TM(CO)
SR/14.8.2007

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W.P.No.21546 of 2007
and

M.P.Nos.1 and 2 of 2007

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