

CASE NO.:
Appeal (civil) 3950 of 2006

PETITIONER:
B. C. Sharma & Another

RESPONDENT:
M. L. Bhalla & Others

DATE OF JUDGMENT: 06/09/2006

BENCH:
S.B. SINHA & DALVEER BHANDARI

JUDGMENT:
J U D G M E N T
[Arising out of SLP (C) No. 6425 of 2005]

Dalveer Bhandari, J.

Leave granted.

The short controversy involved in this appeal pertains to holding of the next elections of a Trade Union called the Uttariya Railway Mazdoor Union registered under the Trade Unions Act, 1926 (hereinafter mentioned as "the Union"). Its members are drawn from the Northern Railways and it is managed by a Central Executive Committee under a duly registered Constitution. The General Body is the supreme body of the Union. According to clause 1 of the Constitution Rules and Byelaws of the Union, 'General Body' consists of office-bearers of the Union and members of the Central Executive Committee and delegates elected in the prescribed manner as defined hereinafter. Clause 6 deals with the aims and objects of the Union. It reads as follows:

"III. Aims and Objects.

6. The aims and objects of the Union shall be:-

a) To establish an independent and free Union based on the principles of Trade Unionism which shall be free from the influences of the Government, the Employer and the Political Parties.

b) To advocate cause, and help to establish leadership of the workers in the management of their Trade Union.

c) To make the Northern Railway Employees conscious of their rights and duties by uniting and consolidating them under the Union.

d) To promote and protect the interests of the Northern Railway employees by legitimate and constitutional means.

e) To watch, defend and promote the interests, rights and privileges of the Northern Railway Employees irrespective

of caste, creed, race or section in all matters relating to their employment.

f) To co-ordinate the activities of different categorical groups of Railway employees for safeguarding their legitimate interests.

g) To regulate relations and to establish mutual understanding between members and administration and to settle issues through negotiations, conciliations and/or arbitration.

h) To educate, prepare and encourage Railway employees to take increasing part in the management, administration and control of the Railway in the larger interest of the country and to enthuse National Spirit in them.

i) To support Legislative measures for the protection of Labour and to oppose the same when it is against the interest of Labour.

j) To press for reasonable hours of work, proper housing and standard of living.

k) To provide funds for the compensation of members for loss arising out of trade disputes.

l) To organize and establish separate funds for the benefit of members or their dependents in cases of sickness, accident or death, non-employment and old-age of such members and for funeral, legal and purpose, declared lawful under the Act.

m) To establish co-operative stores in the interest of Railway Employees.

n) To promote and safeguard the economic, social and civic interests of Railway employees in alliance with the rest of the working class organizations in so far as it does not violate the provisions of Trade Union Act.

o) To amalgamate, federate with or affiliate itself to any Association, Union or Society having kindred aims and objects.

p) To encourage and establish Panchayat System in the Railway Colonies for settling mutual disputes.

q) To provide legal assistance to members by raising special funds in respect of matters arising out of or incidental of their employment.

r) To secure and maintain for the Railway employees:-

- i) Freedom of Association.
- ii) Freedom of Assembly
- iii) Freedom of Speech.
- iv) Freedom of Press.
- v) Right to Work.
- vi) Right to Strike, and;
- vii) Right of representation in the management and in the legislature.
- s) To encourage and establish Night Schools; Clubs, Reading Rooms for the employees and their children and to make grant to the take share in the management and control of any institution having for its objects the education and training of Trade Unionism. Also publish periodicals and journals.
- t) To raise special funds if and when necessary for any or all the objects stated above or for any legitimate objects considered conducive to the growth and expansion of the Union.
- u) To receive grants-in-aid from different sources including Central Board for Workers Education for educating Workers Education Programme."

Clause 26 of the Constitution Rules and Bye-laws of the Union is reproduced as under:

"The General Body shall consist of:

- (a) Office-bearers and members of the Central Council.
- (b) Delegates elected by the members in each Branch of the Union at a meeting held for the purpose on the basis of one delegate for every 150 members or major part thereof, shall comprise of:
 - i) The General Body meeting will be held in every three years.
 - ii) Any other extra General Body Meeting will be held after three years."

According to Clause 28, subject to the control of the General Body, there shall be a Central Council at the headquarters of the Union for the general management of the affairs of the Union consisting of the President, and other office-bearers of the Union. The President and the office-bearers are elected for a period of three years.

According to Clause 34(f), the elected office-bearers will continue functioning till the new elections are held or for another period of six months whichever is earlier.

The last election of the General Body had taken place on 4/5.7.2002. The term of the Office Bearers of the Union came to an end on 4/5.7.2005.

The additional period of six months according to Clause 34(f) has also lapsed, but the scheduled elections have not taken place because of the inter se dispute and litigation between two groups of the Union. There has been considerable litigation both in U.P. and in Delhi between the two groups of the Union. Both groups have levelled serious allegations against each other. It is not necessary to go into the details of those allegations and the litigation for deciding this appeal. Therefore, we do not propose to deal with the litigation between the parties. The parties to this appeal have prayed that the elections of the Union should be held as early as possible. This is also recorded in the order of this Court dated 3.7.2006.

The office-bearers (appellants herein) were elected on 4/5.7.2002 and are still continuing though their term came to an end on 4/5.7.2005. There is serious objection to their further continuation in the office by the respondents. The respondents have levelled serious allegations of financial irregularities and mis-management against the appellants, whereas the appellants have given justification for their continuation in the Office.

The appellants have alleged that the respondents are creating hurdles in the smooth functioning of the Union. According to Clause 26, the 'General Body' consists of the office-bearers and members of the Central Council and delegates elected by the members of each Branch of the Union at a meeting held for the purpose on the basis of one delegate for every 150 members or major part thereof. In order to conduct the elections of the General Body, elections of the Branch Offices also need to be conducted.

The dispute between the parties relates to elections of the office-bearers of the Central Level of Uttariya Railway Mazdoor Union. We may notice the relevant provisions of the rules of the old Uttariya Railway Mazdoor Union Constitution (for short, 'the Rules') a little later, but we may, at the outset, notice that the tenure of the appellants is indisputably over. It has expired on 4/5.7.2005. The suit was filed before the learned trial court regarding the validity of the elections. Evidently, the learned trial court has no jurisdiction to direct continuance of holding of office by the appellants herein beyond the period of tenure. We may also notice that the High Court intended to take assistance of the General Manager of the Northern Railway Administration for holding the elections. He affirmed an affidavit before the High Court stating that the electoral lists of both factions are unacceptable. In the aforementioned situation, a retired Chief Justice of the Andhra Pradesh High Court was appointed for determining the correctness or otherwise of the list of 371 candidates. A report was filed by the said learned Judge upon verification of the names

of the members of the general body on 1.12.2005. Drawing six separate lists with his report, the learned Judge has enclosed all the materials placed before him by the parties. The parties filed objections thereto. The said writ petition has been dismissed. A writ appeal against the same is pending. It has also not been disputed before us that interim applications were filed before the High Court in Letters Patent Appeal Nos.596-600 of 2006.

The parties pray that the elections should be directed to be held as expeditiously as possible. There are, however, disputes with regard to the correctness of the electoral roll and the manner in which the elections are to be held.

The relevant rules are as under :

"26. The General Body shall consist of :-

- a) Office-bearers and members of the Central Council.
- b) Delegates elected by the members in each Branch of the Union at a meeting held for the purpose on the basis of one delegate for every 150 members of major part thereof, shall comprise of :-
 - i) The General Body meeting will be held in every three years.
 - ii) Any other extra General Body meeting will be held after three years.

27. Where it is not practicable to arrange for a General Meeting to be convened for discussion and disposal of any definite issue the point may be referred to all the members of the Union for balloting in the manner hereinafter prescribed. Any question relating to cessation of work should variably be submitted for balloting.

28. Central Council

Subject to the control of the General Body there shall be a Central Council at the Headquarters of the Union for the General Management of the affairs of the Union constituted as below :-

1. President.
2. Working President.
3. Two Vice Presidents.
4. The General Secretary.
5. Five Assistant General Secretaries.
6. One organizing Secretary.
7. One Treasurer.
8. A representative selected by each Branch for every 300 members or major part thereof including Branch Secretary compulsorily.

Note: While the President may be a non-Railwayman, all other shall be members of Railway Staff including ex-Railwaymen referred to in Clause 20 Chapter IV of the constitution subject of provision of Section 22 of the Act.

29. Working Committee.

There shall be a Working Committee comprising of the Central Office bearers and 170 members selected by Central Council from among the Central Council members. This number of 140 can be revised by the Central Council from time to time.

34. Business at the General Body Meeting.

The business to be transacted at the General Body Meeting shall ordinarily be :-

- a) To adopt General Secretary Report.
- b) To pass the Audited Accounts and balance sheet of the Union.
- c) To elect the office bearers of the General Council.
- d) To appoint an Auditor in accordance with the Act or any regulation made thereunder and to fix his remuneration.
- e) To transact such other business as may be laid before it by the Subject Committee.
- f) The elected office bearers will continue functioning till new elections are held or for another period of six months which ever is earlier."

Keeping in view the nature of the order passed by the High Court and furthermore, in view of the fact that some questions are pending before the Delhi High Court, we are not inclined to pronounce on the issue as regards the interpretation of the said Rules, one way or the other at this stage. Such a question, in our opinion, should be determined by the appropriate forum at an appropriate stage.

Indisputably, however, the elections should be held under the supervision of a neutral person. The High Court, as noticed hereinbefore, intended to appoint a retired Chief Justice for resolution of the dispute as regards the voters' list and holding of elections under his supervision. It did not fructify. Revision of the electoral roll is one of the main tasks before an election can be held.

Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that the Registrar of Trade Union, being a statutory authority, should be appointed for the aforementioned purpose. He, in our opinion, should also be appointed as an

administrator and take over the management of the Union till holding of elections are complete. We do so with much reluctance. But, the reason therefor is that the appellants should not be allowed to continue to function in the manner as they are doing, i.e., despite expiry of the tenure and under the interim order passed by the learned trial court. It is difficult to understand as to why the preparation of electoral roll could not be finalised. If the office-bearers are interested in carrying out their trade union activities although, they are entitled to contest the elections but should have at least agreed to finalisation of Electoral College. The appellants having been elected for a definite term, it was their solemn duty to see that elections are held before their tenure comes to an end. We are not unmindful of the fact that the expiry of tenure by itself may not lead to the conclusion that continuation of the office-bearers in the office per se would be illegal. In the instant case, the appellants are continuing in office because of the interim order passed by a court of law, which is per se unsustainable.

We pass this order in order to do complete justice to the parties. It is unfortunate that elections have to be held under the supervision of an officer appointed by the court, but then there does not appear to be any other way out. Although, technically the Registrar of Trade Union cannot be said to be an authority to supervise holding of the elections under the provisions of the Trade Unions Act, but, while directing the said authority the officers who may be designated by him to supervise the holding of elections, we draw sustenance from the decision of this Court in North Eastern Railway Employees Union & Others v. IIIrd Additional District Judge, Farukhabad & Others reported in AIR 1988 SC 2117.

We, for the reasons stated hereinbefore, are of the opinion that the management of the Trade Union should also be taken over by the said authority. The said Registrar may carry out the said function himself or he may appoint an officer or officers not exceeding three in number for the said purpose. We further direct that the accounts of the Trade Union be audited by a Chartered Accountant of repute. The appellants are directed to handover all documents including the books of accounts to the Registrar, Trade Union forthwith.

It will be open to the Administrator to initiate such action(s), as may be found necessary, in the event of any irregularity or illegality of the appellants comes to his notice. The Administrator or his nominee shall function in terms of this order. In case of any necessity, however, it would be open to approach the High Court for requisite directions.

We are informed that elections of 20 branches have already been completed and elections of 35 branches are in the pipeline. The elections of those branches, which have not yet been completed, should also be completed immediately. Any dispute or difference in regard to the list of voters would also be determined by the Registrar of Trade Union.

We are not oblivious of the fact that the main purpose of the Trade Union is to have negotiations with

the Railway Administration as regards the demands of the employees. We hope and trust that the interests of the workmen would not suffer because of this order. We would request the competent authorities of the Northern Railway Administration not to, unless exigency of the situation arises, take any decision in this behalf. In case of any exigency of the situation, however, undoubtedly the elected members and/or those elected members of the branches or otherwise authorized to negotiate with the Railway Administration, shall take part therein.

The appeal is disposed of with the aforementioned directions and observations. There shall be no order as to costs.

JUDIS