

**IN THE COURT OF THE ADDL. DISTRICT JUDGE –CUM- SPECIAL
JUDGE, C.B.I. COURT NO.II, BHUBANESWAR.**

PRESENT ;

Dr.A.K.Mishra,
Addl. District Judge –cum-
Special Judge, C.B.I. Court No.II,
Bhubaneswar.

F.A.O. No. 1/66 OF 2015.

Arising out of order dated 15.5.2015 passed by
the learned Civil Judge (Senior Division), Bhubaneswar
in I.A. No. 252 of 2015 arising out of C.S.No. 2043 of
2015).

Orissa State Housing Board Employees Union,
Represented through its General Secretary,
Tusharkanti Mohanty, aged about 54 years,
s/o. late Bipin Bihari Mohanty, office at Orissa State
Housing Board, Gruhanirman Bhawan, Sachivalaya
Marg, P.S. Kharvelanagar, Bhubaneswar, Dist.Khurda.

... Appellant.

Versus.

1. Additional Registrar of Trade Union-cum-
Dy. Labour Commissioner, Cuttack,
At- Old Secretariat, Cuttack.
2. Bishnu Prasad Patra, aged about 51 years,
s/o. Krupasindhu Patra, Ex-General Secretary,
OSHB Employees Union Working as Accountant in
Accounts Section, Orissa State Housing Board,
Gruhanirman Bhawan, Sachivalaya Marg,
P.S. Kharavela Nagar, Bhubaneswar, Dist.Khurda.

... Respondents.

For the Appellant : Sri S.Das and Associates, Advocates.
For the Respondent No.1 : Sri L.K.Choudhury, Asst. Govt. Pleader.
For the Respondent No.2 : Sri K.K.Panda, Advocate.

Date of hearing : 4.1.2016.
Date of Judgment : 6.1.2016.

JUDGMENT

Order dated 15.5.2015 in refusing injunction by learned Senior Civil Judge, Bhubaneswar in Interlocutory Application No.252 of 2015 is assailed in this appeal by plaintiff-appellant. The defendant no.1 and 2 are respondents.

2. The relevant facts leading to this appeal, sans unnecessary details, may be stated thus : On 2.3.2015 plaintiff filed a suit No. 2043 of 2015 for declaration that the election held on 18.2.2015 in electing office bearers of the executive committee of the Orissa State Housing Board Employees union for the year 2015-16 was valid and interference by Additional Registrar of Trade Union, Defendant No.1 through his letter dated 21.2.2015 was illegal, and also for permanent injunction to restrain the defendant no.2, the Ex-General Secretary of the union from acting in that capacity.

Besides the present two respondents, the Orissa State Housing Board represented through its Chairman was the defendant No.3. The Orissa State Housing Board Employees Union is a registered trade union under the Trade Union Act, 1926 bearing Regd.No.1337 of 1981. It has its bye-law under the name and style "constitution". The bye-law was amended lastly on 8.7.2013. Inter alia vide Rule-5 (b) it is provided that the executive committee shall be elected in every two years before the thirty first March in the annual general meeting of the union. The bye law empowers the Executive committee to fill up the temporary vacancies in the executive committee till next general election.

On 24.3.2014 in the annual general body meeting of union, the Executive Committee was formed. The defendant No.2 Bishnu Prasad Patra was elected as the general secretary. On 12.1.2015 five executive committee members tendered their resignations being dissatisfied with the functioning of union. On the request of the president, the General Secretary reluctantly convened the general body meeting which was held on 9.2.2015. On that day, the then President Sri Debendra Kumar Prusty tendered his resignation

and it was unanimously decided to conduct the election of new office bearers by dissolving the previous body with immediate effect. Mr. Nirod Kumar Ray, a senior member, was appointed as Election Officer. As per plaintiff, notice was issued to hold election on 18.2.2015 and accordingly on that day Executive Committee was unanimously elected. Mr. Tusharkanti Mohanty, who has represented the plaintiff union in this suit, has been elected as General Secretary while Mr. Bishnu Prasad Patra, the previous General Secretary, could not make his entry to the executive committee.

The factual score further reveals that the estranged secretary filed W.P.(C) No.2697 of 2015 in the Hon'ble Court representing the fact that election of union was scheduled to be held on 20.2.2015. The said writ petition was disposed of on 16.2.2015 with following observation:

“Taking into consideration the facts and submissions, this writ petition is disposed of without expressing any opinion on the merit of the case or claim of the petitioner. The petitioner is at liberty to move the Deputy Labour Commissioner, Cuttack (O.P.No.2) by filing a detailed representation detailing their grievance. If such a representation is filed, the same shall be taken up by opposite party no.2 with immediate effect and shall be disposed of in accordance with law, as expeditiously as possible”.

Incidentally, be it noted that on consideration of representation made thereto, the additional Registrar of Trade Union-cum- Deputy Labour Commissioner, Cuttack wrote a letter vide No.578 dated 21.2.2015 to Election Officer Sri N.K.Ray stating that

“From your notice No.2 dated 11.2.2015 it is revealed that the election officer has notified that the election will be held on 20.2.2015 but it has been held on 18.2.2015. The election has violated the provision of Rule 5(b) of existing bye-law of the Trade Union where it is mentioned that the election of office bearers will be held on after completion of two years as

amended on 8.7.2013. the last election was held on 24.3.2014 as such as per 5(b) of the bye-law the next general body election is supposed to be held after completion of two years i.e. after 24.3.2016. Therefore, the election conducted on 18.2.2015 for selection of office bearers is illegal and to be dissolved. As such the existing office bearers elected on 24.3.2014 will remain in force till 24.3.2016 as per the bye-law of the Union. Accordingly the case is disposed of as per direction of Hon'ble High Court, Orissa in W.P.(C) No. 2697 of 2015".

3. Thus, in that view of the matter, the area of vital conflict was the functional status of the elected body of dated 24.3.2014 or of dated 18.2.2015.

4. In that suit Interlocutory Application No.252 of 2015 was filed u/o.39 rule 1 and 2 read with section 151 C.P.C.. O.P.No.1, the Additional Registrar of Trade Union, filed objection challenging the maintainability of the proceeding. It is specifically stated by O.P.No.1 that notice for election was published on 11.2.2015 fixing the date of election to 20.2.2015 but the election officer illegally conducted the election on 18.2.2015 and declared the names of office bearers of executive committee. The O.P.No.1 has further attributed suppression of the material facts by the petitioner to mislead the court. Notably, in that objection there is no mention about any election or selection made on 12.2.2015.

The learned lower court dismissed the interlocutory application without intersecting the conflict of interests in the following words.

“For its proper arrangement otherwise any order passed from this court will enlarge multiplicity of finding because though the writ petition has already been disposed of by the Hon'ble Court. But through the aforesaid direction of Labour Commissioner, the Hon'ble Court has close watch over the same. So, without the knowledge of the Hon'ble Court, any order cannot be passed from this court in this regard”.

5. Feeling aggrieved this appeal is preferred along with a Misc. case u/o.39 rule 1 and 2 read with 151 C.P.C by Appellant bearing I.A.No.53 of 2015 seeking interference of respondents in abeyance. To that interlocutory application, the O.P.No.2 (Defendant No.2 who had not filed any objection in the lower court) has traversed all nodes of petitioner's network stating that in the general body held on 12.2.2015 not only the resignation of office bearers were accepted but also new members were unanimously selected.

Perhaps this vital fact which looms large in this context was not represented before the Hon'ble Court or before the Additional Registrar of Trade Union, Defendant no.1.

6. In course of hearing of appeal, Respondent No.2 filed the resolution register since 20.1.2014 inter alia containing one resolution of General Body meeting dated 12.2.2015.

7. Factual analysis made above unfolds that there was a formation of Executive Committee on 24.3.2014 and some members of the committee tendered resignation for which meeting was held on 9.2.2015. As per plaintiff-appellant, election was held on 18.2.2015 for which prior notice was given on 11.2.2015. Respondent-defendant No.2 asserts that on acceptance of resignation a new committee was formed on 12.2.2015. The Additional Registrar of Trade Union-cum- Deputy Labour Commissioner, Defendant no.1 informed the Election Officer on 21.2.2015 that election held on 18.2.2015 was illegal for being not held on notified date on 20.2.2015.

8. As both parties have filed the respective photo copies of the notice of election officer bearing no.2 dated 11.2.2015 showing the different date of election i.e 18.2.2015 and 20.2.2015 which cannot stand simultaneously, this court passed order dated 8.12.2015 to file affidavit in support of genuineness of the notice. In response thereto, plaintiff-appellant filed affidavit on 15.12.2015 stating that the notice, notifying the date of election to 20.2.2015 and the signature appearing thereon has been forged. Respondent no.2 filed an affidavit stating that "*to the best of my knowledge,*

the so called election officer gave the notice on 11.2.2015 vide notice no.2 for holding the election on 20.2.2015 and the notice was not given for holding the election on 18.2.2015'.

9. The affidavit of respondent no.2 does not specify the factum of ingenuity attached to either of the two notices.

10. Learned A.G.P. representing Respondent no.1 had disputed the bye-law filed by the appellant and Respondent no.2, but failed to file the correct bye-law despite three adjournments given.

11- At the first blush, the impugned order apparently appears to be a self restrained non-speaking order on merit. Ordinarily, the appellate court is loath to interfere in the impugned interim order but when the order itself ordains legal austerity, lancination is a judicial precept. In **Wander Ltd. vs. Antox India (P) Ltd., 1990 Supp. SCC 727**, this view has been affirmed, which is reproduced as under:

"In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. "

12. While the impugned order is not sustainable under law for the reasons stated above, the conspectus of circumstances placed before court invites rational response to the prayer of ad-interim injunction on the basis of prima facie case, balance of convenience and irreparable injury.

13. Admittedly, the election of Orissa State Housing Board Employees union was held on 24.3.2014 and its term is going to be completed on 24.3.2016. Both plaintiff and Respondent No.2 have admitted the resignation of some members of the executive members, but as per plaintiff the election was conducted on 18.2.2015 as noticed on 11.2.2015. Per Contra, Respondent no.2 has stated that on 12.2.2015 on acceptance of resignation new executive committee was unanimously selected. As already stated defendant no.2 represented before Hon'ble Court and also before

Additional Registrar of Trade Union- cum- Deputy Labour Commissioner, Deft.no.1 that election notice vide No.2 dated 11.2.2015 was issued fixing date of election to 20.2.2015. Thus, fact remains that prima facie after resignation of some executive body members, there was a scramble for selecting/electing office bearers of executive committee. The Defendant No.2 did not represent the fact of formation of executive committee dated 12.2.2015 either before Hon'ble Court in the Writ petition or before the Additional Registrar of Trade Union-cum- Deputy Labour Commissioner. Defendant No.2 has also not asserted as to which one of the notices No.2 of 11.2.2015 is forged. Prima facie, the above is the prognostic of *suppressio veri* by defendant no.2. Taking admitted position that biennial tenure of executive committee formed on 24-3-2014 is to lapse on 24-3-2016 , the interim arrangement as per bye law made on 18.2.2015 by General body meeting should be allowed to continue till then. Prima facie it appears from the letter dated 21.2.2015 of the Additional Registrar of Trade Union -cum- Deputy Labour Commissioner addressed to Election Officer Sri Nirod Kumar Ray that for the election conducted proposing the date, the office bearers elected on 18.2.2015 was found illegal. He has not considered the effect of defendants claim that on 12.2.2015 another body was formed and two election notices by same number could not have been issued. Because of this, the functioning of the newly formed elected executive committee dated 18.2.2015 is required to be allowed.

14. With regard to maintainability of the suit, the learned counsel for the appellant has relied upon a decision **dated 3.12.2008 in Writ Appeal No.1400 of 2008 of Madras High Court K.V.Sridharan -vs- S. Sundaramoorthy** wherein it is observed that "*all disputes relating to holding of election of such incorporated bodies, which are nothing but private bodies cannot be challenged before the writ court. If there are disputes between the parties over such election, those disputes can be challenged, if so advised before the appropriate Civil court*".

15. A person whose case is based on falsehood has no right to get equitable relief from the court. When plaintiff has asserted in his affidavit that notice depicting date 20.2.2015 is forged and denial in specifics is wanting from the side of the defendants, it can be said that balance of convenience leans in favour of the plaintiff .In the context of election dispute of a trade union, the right of an elected body cannot be jeopardized by indecipherable and obscure assertions. When right is under peril, irreparable injury is the inevitable end.

In the wake of afore said, the appellant-plaintiff is entitled to the relief of injunction to the extent that defendant no.1 and 2 are restrained from interfering in the function of executive committee formed on 18.2.2015. Hence, it is ordered.

ORDER

The appeal is allowed on contest without cost. The impugned order dated 15.5.2015 in I.A.No.252 of 2015 passed by Senior Civil Judge, Bhubaneswar is hereby set aside. The Respondent No.1 and 2, who are defendant No.1 and 2 in the suit, are hereby restrained from interfering in the function of Executive Committee formed on 18.2.2015 of the plaintiff-petitioner till 24.3.2016.

Additional District Judge –cum-
Special Judge, C.B.I.-II, Bhubaneswar.

Typed to my dictation and corrected by me.
Order is pronounced in the open court today
this the 6th day of January, 2016.

Additional District Judge –cum-
Special Judge, C.B.I.-II, Bhubaneswar.