

M. T. Chandrasenan and Other

Vs

N. Sukumaran

Civil Appeal No. 242 of 1973

(P. Jagmohan Reddy, P. K. Goswami, S. N. Dwivedi JJ)

14.09.1973

JUDGMENT

JAGANMOHAN REDDY, J. -

1. In this appeal the short question is whether the order of the High Court directing the Commissioner to prepare the electoral on the basis of the membership as on April 20, 1969 is in accordance with the previous orders and directions of the High Court.
2. It appears that the second appellant is the trade union while the 1st appellant is the general secretary of the union. On or about April 20, 1969, there were some disputes between the office bearers of the executive committee of the appellant of which the 1st appellant was the general secretary and the other set of office bearers who alleged that they were duly elected as the executive committee of the union of which the respondent was the general secretary. It is unnecessary to go into the history of the subsequent litigation except to say that two suits were filed by the appellant, one for injunction against the respondent from interfering with the possession of the properties of the union in the hands of the 1st appellant and the other for restraining the respondent from interfering with their function as office bearers of the union. Injunction as prayed for in both the suits were granted. The respondent went in appeal to the District Judge against those orders. The District Judge directed the holding of an election of office bearers of the union on the basis of the electoral to be prepared by an election commission consisting of three persons in accordance with the bye-laws of the trade union. Against that order, the appellants went up in revision to the High Court. The High Court varied the order passed by the District Judges only to the extent that instead of an election commission of three persons being appointed, only one person was to be appointed as a Commissioner to prepare the electoral roll in accordance with the bye-laws and hold the election. Till then the status quo was to be maintained. The Commissioner appointed by the Court entered upon his duties and in his report he stated that the respondent would not allow members to pay arrears of subscription to the appellant because they did not recognise the appellant as the duly elected office bearers. As this dispute could not be resolved he settled the list of members of person who had paid by then the subscription. There were 214, but the respondent wanted 288 more person to be added as members. Being dissatisfied with the Commissioner's order which was approved by the munsiff, four persons of whom the respondent was one went up in revision to the High Court against the final order of the munsiff. The High Court allowed those revisions and as already stated varied the lower Court's order to the extent that the Commissioner will prepare the electoral roll on the basis of the membership as on April 20, 1969. Against this order, the appellants have appealed to this Court after obtaining special leave.
3. The dispute before us is whether subscription not having been paid by the respondents as required

by the bye-law can the members who have defaulted payment of their subscription be members of the union ? There is no doubt that if subscription is not paid in accordance with the bye-laws, persons who have failed to pay cannot be considered as members of the union. The respondent says that when 1st appellant is not recognised as a secretary, it would compromise the stand taken in the case of all their members to pay amounts to the appellant. While so respondent has produced no documents to show that the subscription has been paid to him; on the other had in accordance with the directions of the Court, the subscription has to be paid to the appellants. While so appellant must also inspire confidence that on one excuse or the other he will not refuse the acceptance of the subscription and deny the respondent's supporters the membership of the union. He is bound to accept the arrear as well as the current subscription and enrol them as members. The respondent's fear that any payment to the appellants might prejudice his case that the office bearers of the second appellant including the 1st appellant were not duly elected. In order to safeguard against any such apprehension, the direction for payment of the arrears of subscription and the current subscription is without prejudice to any of the contentions that may be open to the respondent to challenge the legality of the appellant continuing as secretary or of the legality of the alleged election of the office bearers, including the 1st appellant, or the 2nd appellant's union. Again in order to avoid any other complication, the respondent can get the membership fee of his supporters and send the same by money order to the appellants along with a list of persons, the arrears due from each one of them and the period for which the subscription is paid. If there is any deficiency in the amounts, the 1st appellant may intimate to the respondent who will thereafter make up the deficiency. The respondent and the 1st appellant will intimate to the Commissioner simultaneously of the action taken by each of them. On the first appellant intimating to the respondent that they have received the amounts, the Commissioner will prepare a list including all such persons in the list already prepared and will comply with the direction of the Court which are in force with respect to which there is no dispute. Subscription shall be paid within six weeks from today. Thereafter the appellants shall check up and intimate the deficiency, if any to the respondent and the Commissioner with four weeks. If there is any deficiency in the payment, the respondent shall make it up within two weeks of the receipt of intimation and if there is no deficiency, the appellants will intimate the commissioner as also the respondent within four weeks from the receipt of the monies that there are on arrears in respect of those persons on whose behalf amounts have been sent to him.

4. In the result the appeal is disposed of in accordance with the terms set out above. There will be no order as to costs.

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