

Writ Petition No.8101/2015

14.12.2015

Mr.Alok Kumar Sharma, learned counsel for the petitioner.

Mr.Kuldeep Bhargava, learned counsel for the respondent No.1.

With the consent of parties, the matter is heard finally.

In this writ petition, under Article 227 of the Constitution of India the petitioner has assailed the validity of the *ex parte* interim order dated 16.11.2015, by which, the Industrial Court has stayed the order passed by the Registrar, Trade Union dated 31.10.2015 and has fixed the case for final arguments on 15.12.2015.

2. Facts giving rise to filing of the writ petition, briefly stated, are that petitioner is a registered Trade Union under the Trade Unions Act, 1926. The petitioner as well as respondent No.1 are the Trade Unions registered under the provisions of the Trade Unions Act. It is the case of the petitioner that respondent No.1 is a Union sponsored by the Management of the Undertaking and is no longer enjoying the support and faith of the majority of the workmen of the industry. The petitioner-union submitted an application under section 17 of the Madhya Pradesh Industrial Relations Act,

1960 (hereinafter referred to as the "Act") before the Registrar for its recognition as representative union for biscuits and confectionary industry for revenue district Gwalior in place of respondent No.1 on the ground that it has large number of membership of the employees in the industry. On receipt of the application, the Registrar issued a show-cause notice to respondent No.1 to show-cause as to why the petitioner be not recognized in place of respondent No.1. Pursuant to which, the respondent No.1 raised an objection before the Registrar. The Registrar after calling the necessary information and other relevant documents conducted hearing and by order dated 31.10.2015 decided the objection preferred by the respondent No.1 and held that respondent No.1 is unable to prove its majority. After rejection of the objections preferred by the respondent No.1 the Registrar observed that it is prepared to verify the physical verification about the majority of workman, as to who is associated with which Trade Union. The Registrar fixed the date for physical verification on 16.11.2015 and directed that verification shall be conducted by Assistant Labour Commissioner. Being aggrieved by the order dated 31.10.2015, the petitioner filed an appeal under section 22 of the Act before the Industrial Court. The Industrial Court by an *ex parte* interim order dated

16.11.2015 stayed the order of Registrar Trade Union and fixed the case for reply of the petitioner and final arguments on 15.12.2015. In the aforesaid factual background the petitioner visited this Court.

3. Learned counsel for the petitioner submitted that the appeal preferred by the respondent No.1 under section 22 of the Act is not maintainable as the appeal to the Industrial Court lies from the order of the Registrar cancelling the recognition. It is further submitted that the order of the Industrial Court is ineffective as the order of Registrar dated 31.10.2015 has already been carried out and no useful purpose would be served by staying the order of the Registrar.

4. On the other hand, learned counsel for respondent No.1 has submitted that since the Registrar has passed the order under Chapter III of the Act, therefore, the appeal under section 22 of the Act is maintainable. It is further submitted that order passed by the Industrial Court is an ex parte interim order and the petitioner is at liberty to file an application for vacating stay. In support of aforesaid submission, reliance has been placed on a Division Bench decision of this Court in

***M.P.Bijlee Karmchari Mahasangh and others vs. Registrar of Representative Unions and others***, 1985 MPLJ 481.

5. I have considered the submissions made by learned counsel for the parties. An appeal is the "right of entering a superior court and invoking its aid and interposition to redress an error of the Court below and "though procedure does surround an appeal the central idea is a right. The right is a statutory right and it can be circumscribed by the conditions of the statute granting it. It is not a natural or inherent right and cannot be assumed to exist unless provided by statute. [See: Principles of Statutory Interpretation, 14<sup>th</sup> Edition by Justice G.P.Singh]. It is well settled that marginal notes appended to section cannot be used for construing the section. It is well settled that the headings prefixed to sections cannot control the plain words of the provision; they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only in the case of ambiguity or doubt, the heading or sub-heading may be referred to as an aid in construing the provision but even in such a case it could not

be used for cutting down the wide application of the clear words used in the provision. It is permissible to assign the headings or title to a section a limited role to play in the construction of statutes. They may be taken as a very broad and general indicators of the nature of the subject matter dealt with thereunder. The heading or title may also be taken as a condensed name assigned to indicate collectively the characteristics of the subject matter dealt with by the enactment underneath; though the name would always be brief having its own limitations. In case of conflict between the plain language of the provision and the meaning of the heading or title, the heading or title would not control the meaning which is clearly and plainly discernible from the language of the provision thereunder. [See: ***Raichurmatham Prabhakar Rawatmal Dugar***, (2004) 4 SCC 766 and ***Karnataka Power Transmission Corporation v. Ashok Iron Works Pvt. Ltd.***, (2009) 3 SCC 240.]

6. In the backdrop of well settled legal position the provisions of the Act may be noticed. Chapter III of the Act deals with the recognition of representative unions and association of employees. Section 17 of the Act deals with recognition of another union in place of existing

representative union. Section 17 stipulates that any Union may make an application to the Registrar for being recognized in place of Union already recognized as the representative union for an industry in a local area on the ground that it has large membership of the employees employed in such industry. Section 22 of the Act, which is relevant for the purpose of controversy involved in the *lis*, read as under:-

*"22. Appeal to Industrial Court from order of Registrar cancelling recognition.- (1) Any party in a proceeding before the Registrar may, within thirty days from the date of the communication of the order passed by the Registrar under this Chapter, appeal against such order to the Industrial Court:*

*Provided that the Industrial Court may, for sufficient reason, admit any appeal made after the expiry of such period.*

*(2) The Industrial Court may admit an appeal under sub-section (1) if on a perusal of the memorandum of appeal and the decision appealed against it finds that the decision is contrary to law or is otherwise erroneous.*

*(3) The Industrial Court in appeal may confirm, modify or rescind any order passed by the Registrar and may pass such consequential orders as it may deem fit. A copy of the orders passed by the Industrial Court shall be sent to the Registrar."*

7. From perusal of section 22 of the Act it is evident that it provides for an appeal from the order passed by the Registrar

under Chapter III to the Industrial Court. Sub-section (3) of Section 22 of the aforesaid Act further provides that Industrial Court in any appeal may confirm, modify or rescind any order passed by the Registrar and may pass such consequential orders as it may deem fit. Thus, Section 22 of the Act is not ambiguous. Therefore, heading appended to it cannot be referred to as an aid in construing the provision and cannot be used for cutting down the application of clear words which provides for an appeal against the order passed under Chapter III of the Act. Admittedly, the order dated 31.10.2015 has been passed under Chapter III of the Act. Therefore, the Act itself confers statutory right to an aggrieved person to file an appeal. In view of preceding analysis the contention raised on behalf of the petitioner that an appeal filed by the respondent No.1 is not maintainable before the Industrial Court is required to be stated to be rejected.

8. It is also pertinent to mention here that the order impugned in this writ petition is an ex parte interim order and the petitioner has a remedy to approach the Industrial Tribunal and to file an application for stay in the proceeding which are pending before the Industrial Court. For this reason

-8-

also, I am not inclined to interfere with the ad interim ex parte order in exercise of writ jurisdiction of this Court.

9. In the result, the writ petition fails and is hereby dismissed.

(Alok Aradhe)

Judge

RM