

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 283/2013

AIRPORT AUTHORITY KARAMCHARI UNION Petitioner

Through: Mr. Sujeet K. Mishra, Advocate

versus

UNION OF INDIA AND ORS Respondents

Through: Ms. Anjana Gosain and Mr. Roshan Lal Goel, Advocates for R-1 and 2

Mr. Digvijay Rai, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

21.01.2013

CM No.592/2013 (exemption)

Allowed subject to just exceptions.

W.P.(C) 283/2013 and CM No.591/2013 (stay)

Learned counsel for the petitioner limits his grievance to the supervision of elections by respondent no.2 i.e., Chief Labour Commissioner (in short CLC). The learned counsel for the petitioner basis his argument on the Memorandum dated 18.12.1980 issued by the Govt. of India, Ministry of Labour and the judgment of the Supreme Court in the case of Food Corporation of India Staff Union Vs. Food Corporation of India, 1995 Supp. (1) SCC 678.

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In addition, learned counsel for the petitioner seeks to place reliance on the Memorandum dated 08.04.2011 issued by the Govt. of India (Annexure P-10).

Mr. Rai, who appears on advance notice, on behalf of respondent no.3 says, that the petitioners had agreed to the manner in which the elections would be held at a meeting held on 23.11.2012. Mr. Rai says that guidelines and instructions have been issued apropos to the decision taken at the said meeting. Mr. Rai says that in substance, the decision taken is that referendum would be held by secret ballot. He, however, says that he will take instructions as to whether the same could be supervised by respondent no.2.

Learned counsels for respondent nos.1 and 2 says that she will also take instructions in the meanwhile.

List on 22.01.2013.

RAJIV SHAKDHER, J

JANUARY 21, 2013

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 283/2013 and CM No.591/2013 (stay)

AIRPORT AUTHORITY KARAMCHARI

UNION Petitioner

Through: Mr. Sujeet K. Mishra, Advocate

versus

UNION OF INDIA AND ORS Respondents

Through: Ms. Anjana Gosain and Mr. Roshan Lal Goel, Advocates for R-1 and 2

Mr. Digvijay Rai, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

22.01.2013

Ms. Gosain has been unable to get in touch with the Chief Labour Commissioner (in short CLC). She says that she will communicate the

concerns of the court as also the observations made by this court in its earlier order dated 21.01.2013.

An affidavit indicating as to what is the stand of the CLC vis-?-vis the two circulars dated 18.12.1980 and 08.04.2011 as well as the applicability of the judgment of the Supreme Court in the case of Food Corporation of India Staff Union Vs. Food Corporation of India, 1995 Supp. (1) SCC 678, be filed, in which, the CLC, in particular, will take a stand on the appointment

W.P.(C) 283/2013 Page 1 of 2

of the Returning Officer for the elections to be held. A copy of the affidavit filed will be given to the counsel for the petitioner and respondent no.3. In case the affidavit is not filed, the CLC, will remain present in court on the next date of hearing.

Learned counsel for respondent no.3 will also file an affidavit taking a stand, inter alia, on the appointment of a returning officer.

Both these affidavits will be filed within one day in view of the fact that elections are to be held on 29.01.2013 and also in view of the intervening holidays in between.

List on 24.01.2013.

Dasti under the signatures of the Court Master.

RAJIV SHAKDHER, J

JANUARY 22, 2013

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 283/2013 and CM No.591/2013 (stay)

AIRPORT AUTHORITY KARAMCHARI UNION Petitioner

Through: Mr. Sujeet Kumar Mishra, Advocate

versus

UNION OF INDIA AND ORS Respondents

Through: Ms. Anjana Gosain with Mr. Roshan Lal, Advocates for R-1 and 2

**Mr. K.K. Rai, Sr.Advocate with Mr. Digvijay Rai and Mr. Natwar Rai,
Advocates**

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

24.01.2013

The short point in the present petition is that whether or not the Returning Officer should be appointed in consonance with the circular dated 18.12.1980 (in short 1980 circular) issued by the Govt. of India, Ministry of Labour and subsequent circular dated 08.04.2011. Besides this, the petitioner also seeks the application of the judgment of the

Supreme Court of India in the case of Food Corporation of India Staff Union Vs. Food Corporation of India, 1995 Supp. (1) SCC 678.

The sum and substance of the petitioner's submissions is that the elections which are being held to determine the majority union by way of secret space ballot, require the appointment of a Returning Officer, for the conduct of elections. Quite curiously, respondent no.3 seems to oppose this

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request. I had called upon both respondent nos.1 and 2 as well as respondent no.3 to file short affidavits in view of the fact that the elections are slated to be held on, 29.01.2013.

While respondent nos.1 and 2 have taken the position in their affidavit, which is furnished in court today, broadly that: the 1980 circular would be applicable only where elections are to be held by the Chief Labour Commissioner (in short the CLC) and not to cases where elections are not held by it. The affidavit also seeks to take a position that the judgment of the Supreme Court in the case of Food Corporation of India (supra) would apply only in those cases where either management or the labour union approaches the CLC.

Apart from this, respondent no.1 has also taken the stand that since elections are to be held over 118 locations across the length and breadth of the country and because of the fact that it does not have the necessary wherewithal, it may be administratively difficult for the CLC to conduct the elections. In other words, it is the stand of respondent nos.1 and 2 that the appointment of the Returning Officer is not feasible? as venue of elections extends to over 100 locations. It is further averred that on the request of respondent no.3 i.e., Airport Authority of India (AAI), 15 observers have been appointed qua what are termed as ?15 sensitive locations?. Apparently, this procedure was also followed in the last elections as well, which were held in 2007.

On the other hand, as indicated above, respondent no.3 has taken an adversarial stand whereas one would have thought that, it would be neutral to the appointment of a returning officer for conducting the elections. In

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support of the stand taken by respondent no.3, I have heard the

submissions of Mr. Rai, learned senior counsel. His submissions briefly are that a similar procedure was followed in 2007 Elections; and there was a joint meeting held on 23.11.2012 where draft guidelines regarding the conduct of the elections were circulated, to which no objections were

received from the petitioner. In particular, no objection was raised qua the appointment of a Returning Officer contrary to the provisions of the 1980 circular, i.e., by the CLC, and lastly, that since, the election process is on, the elections should not be interdicted at this stage. In addition it was the submission of Mr. Rai, that several administrative difficulties would be faced in the appointment of the Returning Officers for over 100 locations. It is his submission that the appointment of observers would suffice.

Having heard the learned counsel for the parties, I am of the view that there is something to be said in the submissions made by the learned counsel for the petitioner. Learned counsel for the petitioner says that the 1980 circular applies and more than that the aforesaid judgment of the Supreme Court is applicable in the facts and circumstances of this case. It is also his submission that the judgment is in rem, to which Mr. Rai submits to the contrary, that the said judgment is in personam, and not in rem, and therefore, is not applicable to the elections generally held qua public sector organizations. I had put to learned counsel for the petitioner as to whether any objection had been raised by the petitioner to the appointment of the Returning Officer by AAI i.e., respondent no.3 as against the CLC. Learned counsel for the petitioner candidly submits that prior to the institution of the petition no objection had been taken by the petitioner and that the objection

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had as a matter of fact emanated from advice received by the petitioner/ union from him and that members were unaware of the judgment of the Supreme Court. It is his contention that in any event this is not a right which the petitioners can said to have waived and thus could insist on appointment of the Returning Officer by the CLC even at this stage.

Having regard to the submissions of learned counsel for the parties, I am of the view that the matter needs examination. The difficulty is that the election process is started and to a certain extent, the petitioners have been guilty of not approaching the court at the earliest. As to what impact finally, the issues raised in the writ petition will have on the outcome of the election, will have to be examined at the stage of adjudication of the writ petition. To stay the

election at this stage would, in one sense, be interdicting the election process. Therefore, while declining the request for any interim orders in the nature of stay, I make it clear that the outcome of the elections will be subject to the final adjudication in the writ petition.

With the aforesaid observations, the interim application is disposed of.

In the meanwhile, the petitioners will be at liberty to file a rejoinder to the counter affidavit filed by the respondents.

List the writ petition on 10.04.2013.

RAJIV SHAKDHER, J

JANUARY 24, 2013

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 283/2013 and CM No.591/2013

AIRPORT AUTHORITY KARAMCHARI UNION Petitioner

**Through: Mr. Deepak Anand, proxy counsel for Mr. Sujeet Kumar Mishra,
Advocates**

versus

UNION OF INDIA AND ORS Respondents

**Through: Mr. Roshan Lal Goel with Ms. Anjana Gosain, Advocates for R-1 and
2**

**Mr. K.K. Rai, Sr. Advocate with Mr. Digvijay Rai, Advocate for the
respondent/AAI**

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

10.04.2013

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**The learned counsel for the petitioner seeks time to file a
rejoinder to the counter affidavit filed by respondent no.3. Let the
same be filed within four weeks.**

List on 25.07.2013 alongwith WP (C) 754/2013.

CM No.4311/2013 (u/o. 1 R. 10 CPC)

**This is an application filed on behalf of Airport Authority
Employees Union .**

There is no representation on behalf of the applicant.

The application is dismissed for non-prosecution.

RAJIV SHAKDHER, J

APRIL 10, 2013

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 283/2013 and CM APPL. NO. 591/2013

AIRPORT AUTHORITY KARAMCHARI UNION

..... Petitioner

Through: Mr. Sujit Kumar Mishra, Advocate

versus

UNION OF INDIA AND ORS. Respondents

Through: Ms. Anjana Gosain, Adv. for R-1 and 2

Mr. K.K. Rai, Sr. Advocate with

Mr. Digvijay Rai, Advocate for

AAI/R-3

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

ORDER

25.07.2013

List on 12th December, 2013 along with W.P.(C) No. 754/2013.

SUDERSHAN KUMAR MISRA, J.

JULY 25, 2013

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