

PUBLIC EMPLOYEES UNION

v.

SEMISI LASIKE & ANOTHER

[HIGH COURT, 1993 (Jesuratnam J), 16 June]

Civil Jurisdiction

B *Trade Unions-members meetings-power to call- Trade Unions Act (Cap 96)
Sections 14, 17, 37, 54.*

C Dissident members of a Union purported to call an extraordinary general meeting. The High Court examined the relevant provisions of the Act and HELD: Such meetings can only be called by the General Secretary of the Union and not by anyone else including the Registrar of Trade Unions who however had extensive alternative powers.

No cases were cited.

M. B. Patel for the Plaintiff

H.M. Patel for the Defendant

D Interlocutory application in the High Court.

Jesuratnam J:

E This is an application by the defendants to dissolve the interim injunction I issued on 27th may 1993 restraining the defendants and persons named in annexure "B" of the plaintiff's affidavit and/or their associates and/or their servants or agents or any of them from holding, calling, conducting, convening any meeting of the plaintiff union and its members for any purpose whatsoever until 4th June 1993. On 3rd June 1993 I extended the injunction until further order.

F Mr. H.M. Patel for the defendants argues that the interim injunction should not have been issued ex parte in the first place and that in any case there are no grounds on which it can be issued and/or continued.

G He argued that the plaintiff has no locus standi. I need say nothing more on this submission than to point to Section 17 of the Trade Unions Act (Cap. 96) which renders it a body corporate with power, inter alia, "to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its constitution".

Secondly, Mr. H.M. Patel submitted that no cause of action has been pleaded in the writ of claim. I find that there is an indorsement of claim seeking a declaration that the purported meeting is null and void for the reasons set out and damages and costs. There is no merit in this submissions.

Thirdly, Mr. H.M. Patel submitted that the plaintiff had suppressed a material fact in that he did not disclose the letter written to the General Secretary by the Registrar of Trade Unions on 21st May 1993 when the plaintiff successfully moved the court to issue an ex parte injunction on 27th May. I shall have more to say about this letter later on but suffice be it to say at this point that if the plaintiff had in fact disclosed this letter it would have reinforced the plaintiff's claim for immediate interim relief because in that letter the Registrar had asked the General Secretary to act immediately to call an Annual general Meeting within 1 month from that date.

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One of the complaints of the plaintiff is that the dissident group acted in a way which made it impossible for the General secretary to act in the way he was directed to do by the Registrar.

Fourthly, Mr. H.M. Patel argued that Rule 27 of the Union constitution that "not less than fourteen days' notice of an Extraordinary general meeting shall be given by inserting a notice in two newspapers circulating in the colony and an agenda showing the business of the meeting shall accompany such notice" applied only to meetings called by the General Secretary and not to Extraordinary general meetings called by 20% of the membership. It is admitted that the dissident group published the required notice in the "Fiji Times" only on 21st May calling the meeting for 29th May thus giving only 8 days' notice. I may also say that - apart from the rules - that even for practical reasons 14 days are necessary to enable outstation branches, like Labasa, to summon their own meetings and elect their delegates for the extraordinary general meeting at Suva.

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Mr. H.M. Patel also submitted that Rule 20 permits an Extraordinary general meeting to be called by 20% of members themselves and not through the Executive committees or the General Secretary.

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Mr. M.B. Patel for the plaintiff too points out to Rule 20 which reads as follows:-

"Extraordinary general meetings may be called by the Executive Committee or at the request of twenty percentum or more of the total number of members of the union who are not more than thirteen weeks in arrears with their subscription".

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The scheme of the Union constitution clearly indicates that 20% may request but that it is the General Secretary who can call such meetings. Indeed the dissident group fully realised this position when they wrote to the General Secretary on 29th April 1993 requesting him to call such a meeting. Mr. H.M. Patel submits that if the General Secretary fails to do so the 20% of members can act on their own. Mr. M.B. Patel for the plaintiff argues that there is no provision in the rules for such a course. Indeed all the provisions in the rules are to the contrary. Rule (67b) which deals with the duties of the General Secretary states that "he (the General Secretary) shall call and attend all meetings

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and record minutes thereof”.

A Rule 30 states that all elections and other matters for decision by secret ballot at the Annual general meeting or Extraordinary general meeting shall be held under the authority of the Executive committee or under the authority of an election sub-committees appointed specifically for the purpose by the Executive committee.

B According to Rule 32 it is the General Secretary or other officer appointed for the purpose who shall issue ballot papers to voting members. It is also obvious that it is the General Secretary who will know as to who are qualified to be voting members because he maintains the register of membership and payment of subscriptions. According to Rule 65 and Rule 66 it is the President or in his absence the Vice-President who shall preside at Annual General and Extraordinary General Meetings. Even under Regulation 10(1) of the Trade Union Regulations (Annexure) Regulation 1991 the ballot shall be conducted by the returning officer appointed by the Union. The Registrar of Trade Unions or an official appointed by him shall only supervise it.

D It will thus be seen that an extraordinary general meeting comes within the ambit of the rules of the Constitution of the union as regards its summoning its agenda, the manner of its conduct and its result. Mr. H.M. Patel's argument is based on the layman's approach if I may say so without offence. He was perhaps voicing the view of his clients. When the General Secretary did not act on their letter of 29th April and having no other avenue the dissident group did what they did. This argument has to be stated to be rejected out of hand. If every time 20% of members disagree with the General Secretary and the Executive Committee and do as the dissident group did on this occasion there will be chaos and disorder. Rules of a union are designed to prevent such deplorable situations.

E Section 37(1) of the Trade Unions Act states “The rules of every trade union shall provide for all the matters specified in the schedule”.

F Now the schedule to the Trade Union Act sets out the “matters for which provisions must be made in the rules of every trade union”. Section 9 of the schedule requires rules to be made regarding “the method of convening and conducting annual general meetings and extraordinary general meetings”

G The Registrar of Trade Unions may refuse to register a trade union if under Section 13(1) (a) of the Trade Union Act “the trade union has not complied with the provisions of this Act or of any regulation made thereunder.” And the plaintiff union was registered as being in accord with the provisions of law. It is therefore clear that what the dissident group did was outside and in violation of the rules of the Union and the provisions of the Trade Unions Act.

It may well be that there are deficiencies in the conduct of the Executive Committee and the General secretary including financial mismanagement. But there are ways in which they can be kept in check. There are remedies to the grievances of the dissident group even without having to invoke the aid of this court as for instance a declaration as a last resort.

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The Registrar of Trade Unions has ample powers to bring an offending Executive Committee and the General Secretary to book. Section 14(2)(d) of the Trade Union Act gives him power to cancel or suspend a trade union if it "has wilfully and after notice from the registrar contravened any provisions of this Act" Section 14(3)(a)(b) gives him the power to suspend a trade union for causes contained therein. Again Section 37(4) gives him power to move a court of law. He can proceed in the Resident Magistrate's Court under Sections 54(1) or 54(4) or 56 or 57(2) or 61(1) if such be the case.

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It was probably with those in mind that the Registrar of Trade Unions wrote to the General Secretary on 21st May giving him an ultimatum to comply with his directions contained therein within 1 month of that date. The Registrar was on the right track when he wrote that letter. But what is it that made him change his mind drastically and dramatically and support the forces of chaos and disorder within a week. Perhaps the clue is found in a document entitled "Press release" signed by the first defendant and dated 27th May 1993 annexed to the defendants' affidavit dated 28th May 1993.

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The second paragraph reads thus "In a meeting held with Mr. Kelemedi Bulewa, Minister for Justice, Mr. Jitoko, Registrar-General and Mr. Katonivualiku, the Registrar of Trade Unions and an interim committee formed to organise the meeting due to the failure on the part of the current PEU secretariat, the interim committee and aspiring candidate for the position of General secretary were given the go-ahead by the responsible authorities to conduct the meeting in accordance with the union's constitution". It must however be said that the "go-ahead" was given one day before the interim injunction was issued by this court. But the Registrar of Trade Unions seems to have persisted with the "go-ahead" even after the interim injunction was issued by this court and published in the newspapers. Did he not know that an injunction issued by this court required prompt and peremptory obedience? It may well be that it was the unwarranted action of the Registrar of Trade Unions in sending his officers to this prohibited meeting that emboldened a handful of misguided and ill-advised dissidents to flout the injunction and persist in their unlawful conduct.

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Any meeting held in violation of an injunction is ipso facto null and void. I do not therefore need to hear anyone in order to declare illegal a meeting held on 29th May 1993 in flagrant violation of an injunction of this court. And I quash that meeting.

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Consequently all elections held at that meeting are null and void and of no effect in law. The status quo ante will now prevail.

A It is my view that whatever inconvenience may have been caused to innocent parties and individuals by the illegal activities of an errant group it is the paramount duty of this court to uphold the rule of law and all that it means at any cost.

B I wish to warn public officials and indeed everyone in general that they ought on pain of penal consequences act on the unquestionable basis that the order of this court is always right until it is set aside by itself on further inquiry or by the Fiji Court of Appeal on appeal.

C It is now open to the General Secretary of the plaintiff union to comply immediately with the directions issued to him by the Registrar of Trade Unions by his letter dated 21st May 1993 which I find are in complete conformity with the Rules of the Union constitution and the Trade Union Act. It may well be that the dissident group can still elect its nominees if it is able to command the requisite majority at such a meeting which will in any case be as widely representative as possible of the entire membership if the Registrar's directions are followed.

D Mr. M.B. Patel also brought to my notice that Ms. Salote Qalo, the lady who was elected General Secretary at the prohibited meeting on 29th May was the same lady who came to the Fijian hotel on behalf of the defendants along with Mr. H.M. Patel on 28th May 1993 when I refused the ex parte application by the defendants to dissolve the interim injunction I had issued on the 27th May 1993. I do not think the circumstances are such that I can deal with her summarily now for contempt. In my view committal, if any, must await appropriate proceedings by the plaintiff against named persons who should be heard.

E I dismiss the defendants' application with costs to be taxed if not agreed.

I direct the Chief Registrar to forward a copy of this order to The Registrar of Trade Unions.

F *(Application dismissed)*

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