

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1325 OF 2015

Bank Employees Union, Kolhapur ... Petitioner
Vs.
Co-operative Bank Employees Union, Sangli & others ... Respondents

Mr. Sandesh Shukla i/b. Abhay Nevagi & Associates for Petitioner.
Mr. Meelan Topkar for Respondent No.1.
Ms Vaishali Nimbalkar, AGP for Respondents No.2 and 3.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 24, 2015

ORDER :

Heard Mr. Shukla, learned Counsel for petitioner, Mr. Topkar, learned Counsel for respondent No.1 and Ms Nimbalkar, learned AGP for respondents No.2 and 3 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 16.09.2014 passed by the learned Member, Industrial Court, Maharashtra, Sangli (for short 'Tribunal') in Appeal (I.C.) No.1 of 2012. By that order, the Tribunal partly allowed the appeal and quashed and set aside the judgment and order dated 16.03.2012 passed by the respondent No.2 herein - Assistant Registrar, Bombay Industrial Relations Act, 1946, Pune and remitted the matter to the respondent No.2 to decide it afresh finally all the issues as per the directions of the Tribunal and of this Court by giving reasonable opportunity to both the parties to defend their case on merit.

3. In support of this Petition, Mr. Shukla submitted that the petitioner is a Representative Union for the Banking Industry in the local

area of the District of Sangli under the provisions of the Bombay Industrial Relations Act, 1946 (for short 'Act'). Respondent No.1 is a Trade Union registered under the Trade Unions Act, 1926 bearing registration No.PN-3807 dated 28.02.2007. On 17.01.2008, respondent No.1 filed two applications. One under Section 16 of the Act for its registration in place of the petitioner and another application under Section 23(4) read with Rule 28 of the Bombay Industrial Relations Rules, 1947 (for short 'Rules'). On 04.03.2008, respondent No.2 - Assistant Registrar issued show cause notice. On 06.08.2008, petitioner raised objections about the locus of respondent No.1 to file the applications. By order dated 31.01.2009, respondent No.2 directed the respondent No.1 to submit its record, failing which the matter will be proceeded ex-parte. Aggrieved by that order, the petitioner instituted Appeal before the Tribunal. By order dated 13.03.2009, the Tribunal dismissed the appeal and directed the respondent No.2 to decide all objections raised by the petitioner at the time of final hearing of the applications. The petitioner challenged that order by instituting Writ Petition No.9243 of 2009 before this Court. By order dated 10.11.2009, this Court confirmed the order passed by the Tribunal and directed the respondent No.2 to decide all objections in its final order.

4. Mr. Shukla submitted that respondent No.2, after considering the objections raised by the petitioner had rejected the applications finally on 16.03.2012. He invited my attention to the objections raised by the petitioner, which are to the following effect:

“Issue 1: The constitution of the respondent No.1 Union debars all such persons from membership who are employees of Banks other than Co-operative Banks.

Issue 2: Respondent No.1 has no subscription for 3 months prior to making the applications i.e. for the months of October 2007-December 2007.

Issue 3: The registers maintained by respondent No.1 are false and forged.”

5. Mr. Shukla submitted that the constitution of the respondent No.1 debars all such persons from membership who are the employees of banks other than co-operative banks. Respondent No.1 has no subscription for 3 months prior to making applications on 17.01.2008 i.e. for the months of October 2007, November 2007 and December 2007. Lastly, the registers maintained by the respondent No.1 are fabricated and forged documents.

6. Mr. Shukla submitted that, after considering the material on record, by order dated 16.03.2012, the respondent No.2 rejected the applications made by the respondent No.1 on 17.01.2008. He invited my attention to the notification No.BIR/1292/1345(A)/Lab-2 issued under Section 2(4) of the Act which provides that all the provisions of the Act shall apply to the Business of Banking companies as defined under Section 5 of the Banking Regulations Act, 1949 (being banking companies not having branches or other establishments outside the State of Maharashtra) and Co-operative Banks to which that Act applies. In other words, Mr. Shukla submitted that the persons who are employees of banks other than co-operative banks cannot be enrolled as members by the respondent No.1 as per its constitution and this is in the teeth of the notification issued under Section 2(4) of the Act. As against this, the Tribunal allowed the appeal on the ground that no opportunity of hearing was given to both the Unions after 03.12.2010 as also after 03.12.2010, there was no verification of the membership of both the Unions by the respondent No.2. He, therefore, submitted that the impugned order passed by the Tribunal deserves to be set aside thereby restoring the order passed by the respondent No.2.

7. On the other hand, Mr. Topkar supported the impugned order. He submitted that by order dated 13.03.2009, the Tribunal directed the respondent No.2 to decide all the objections at the time of final hearing of the applications filed by the respondent No.1. The said order was confirmed by this Court on 10.11.2009. The Assistant Registrar disobeying the directions issued by the Tribunal as also by this Court decided the applications arbitrarily on preliminary points without deciding the verification of membership of both the Unions as also without hearing the parties. He further submitted that the expression 'banking industry' is understood to mean Co-operative Banking Industry'. In support of this submission, he relied upon the decision of this Court in the case of **Bank Karmachari Sangh Vs. Assistant Registrar**, (2002) III LLJ 810 (Bom.). He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

8. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that initially, the petitioner had challenged the order dated 31.01.2009 passed by the respondent No.2 by filing appeal before the Tribunal. By order dated 13.03.2009, the Tribunal dismissed the Appeal and directed the respondent No.2 to decide all objections raised by the petitioner at the time of final hearing. It is equally not in dispute that the said order was challenged before this Court by instituting Writ Petition No.9243 of 2009 and the said Petition was dismissed on 10.11.2009. The Assistant Registrar was obliged to verify the membership in terms of Section 16 of the Act by affording opportunity of hearing to both the Unions. In paragraph 9, the Tribunal recorded that after 03.12.2010, there was no verification of membership of both the Unions by the respondent No.2. No opportunity of hearing

was given to both the Unions. In short, the order was passed in violation of principles of natural justice. On this ground alone, the Tribunal set aside the order passed by the respondent No.2. Mr. Shukla was not in a position to demonstrate that the findings recorded by the Tribunal in paragraph 9 are contrary to material on record.

9. In view thereof, I do not find that the Tribunal has committed any error in passing the impugned order. As far as contention raised by Mr. Shukla based on notification is concerned, in view of the order I propose to pass, it is not necessary to deal with that contention. Respondent No.2 will now decide the applications in the light of the observations made in the orders dated- (i) 13.03.2009 of the Tribunal, (ii) 10.11.2009 of this Court and (iii) 16.09.2014, impugned order passed by the Tribunal. Hence, Petition fails and the same is dismissed. It is made clear that all the contentions on merits of the parties are expressly kept open.

10. At this stage, Mr. Shukla orally applies for stay of this order for a period of 2 weeks. Mr. Topkar opposes this application on the ground that the applications are made on 17.01.2008 and till date, no verification is made by the respondent No.2.

11. In view of the fact that the applications are pending since 2008 and till date, no verification is made, I do not find that any case is made out for staying this order. Hence, oral application is rejected.

(R. G. KETKAR, J.)