

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 10316 OF 2014.

Bassein Catholic Cooperative Bank
Employees Union
C/o Bassein Catholic Cooperative Bank Ltd.,
Sarovar Apartment, Papadi,
Tal.Vasai, Dist. Thane.

.. Petitioner

Vs

1. Cooperative Bank Employees Union
3, Devidarshan CHS Ltd.
Ghantali Cross Road,
Naupada, Thane
2. Assistant Registrar,
Under Maharashtra Industrial Relations
Act, Thane
Office of the Deputy Commissioner
of Labour,
MIDC Office Complex,
Near Wagle State Check Naka,
Thane (W).

.. Respondents

Mr.A.V.Bukhari, Senior advocate a/w Mr.A.K.Jalisatgi, for the
Petitioner.

Mr.M.S.Topkar a/w Ms Pavitra Manish, for Respondents.

***CORAM: N.M.Jamdar, J.
Wednesday 9 September, 2015***

Oral Judgment:

Rule was issued in this petition on 24 November 2014 and
ad-interim relief was granted. Matter is listed today for hearing as

to interim relief. At the joint request of the parties, taken up for final disposal.

2. The Petitioner-union has challenged the order passed by the Industrial Court confirming the order passed by Assistant Registrar, cancelling the status of the Petitioner-union as a representative and approved union, and also its registration.

3. The Petitioner-union was registered some time in the year 1978 and acquired status of representative union in the year 1988. An application was filed by the Respondent No.1, on 15 December 2012 under Section 16 and 23(4) of Maharashtra Industrial Relations Act, 1946 to the Assistant Registrar, Thane. The Respondent No.1 claimed to have a larger membership, and prayed that it may be registered as a representative-union in place of the Petitioner. It was also the case of the Respondent No.1 that the registration of the Petitioner-union itself was illegal. The application of the Respondent No.1 was allowed by the Assistant Registrar on 17 February 2014 and the appeal filed by the Petitioner to the Industrial Court was dismissed on 10 October 2014. Thereafter, the Petitioner filed the present petition, which was admitted on 24 November 2014, and ad-interim relief staying the cancellation of registration and status as recognised and approved union.

4. The learned counsel for the parties, after arguing the matter for some time, requested that instead of keeping the petition

pending for consideration of various issues, it could be disposed of by directing the Assistant Registrar to ascertain the comparative strength of membership of both the Petitioner and the Respondent-union for the concerned period.

5. My attention is drawn by the learned counsel to Rule 28-A of the Maharashtra Industrial Relations Rule of 1947. Under Rule 28-A a methodology is laid down for ascertaining the membership of a union, and for the purpose of Section 13, 16, 17 and 23 of the Act, Registrar is empowered to hold an inquiry. It is the grievance of the Petitioner that, while coming to the conclusion that the membership of the Petitioner-union is only 304, the Registrar has not examined the relevant material. On the other hand, it is asserted by the Respondent-union that the Respondent-union at the relevant time had membership exceeding that of the Petitioner. As stated above, the learned counsel for the parties have reached a consensus that the comparative membership needs to be ascertained to resolve the issue. The learned counsel for the Respondents states that with an intention to resolve the controversy at the earliest and the petition be not kept pending, the Respondent-union will not raise the issue of the illegality in registration of the Petitioner-union, but will restrict its contest only on the factum of comparative membership. This stand is accepted. The enquiry henceforth shall only be regarding the comparative membership.

6. To parties also agree that the enquiry will be for the period

from September to November 2012. For that purpose the Registrar will hold such an inquiry as is envisaged under Rule 28A (8) of the Rules of 1947.

7. Accordingly the Writ petition is disposed of by quashing and setting aside the impugned orders dated 10 October 2014 and 17 February 2014. The Applications filed by the Respondents on 15 December 2012 under Section 16 and 23(4) of the Maharashtra Industrial Relations Act, 1946 stand restored to the file of Assistant Registrar, Thane. The Assistant Registrar will hold an inquiry as contemplated under Rule 28-A, also keeping in mind the sub-rule (8), as early as possible, preferably within six months from the date parties appear before it, for ascertaining the membership for the period from September to November 2012.

8. Parties shall appear before the Assistant Registrar, Thane on 5 October 2015. All contentions of the parties as regards the comparative strength of membership are kept open. No order as to costs.

(N.M.Jamdar, J.)

“Certified to be true and correct copy of original signed Judgment.”

“Certified to be true and correct copy of original signed Order.”