

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.06.2016

Delivered on: 10.06.2016

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.18397 of 2016
and WMP.Nos.16145, 16146 and 16305 of 2016

K.S.S.Kowshik Associate ... Petitioner
State Bank of India,
Coimbatore.

Vs.

1.State Bank of India,
Represented by its Chairman,
State Bank Bhavan,
Corporate Office,
Mumbai.

2.The President,
Election Committee,
State Bank Staff Union (CC),
State Bank of India,
84, Rajaji Salai,
Chennai.

3.State Bank's Staff Union (Chennai Circle)
(regd.No.883),
Represented by its General Secretary,
Shri D.Singaravel
State Bank of India,
84, Rajaji Salai,
Chennai - 641 018.

4.State Bank Staff Union (CC),
Represented by its Deputy General Secretary,
Shri.Sounderrajan,
State Bank of India,
Kurunji Complex,
Coimbatore-641 018.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Mandamus directing the respondents to constitute election
committee so as to start the election process as prescribed in
Rule No.4(ii) of the State Banks' Staff Union Bye-Laws and

Rules 2010 by considering petitioner's representation dated 21.05.2016 and 23.05.2016.

For Petitioner : Mr.K.S.S.Kowshik/Party-in-Person

For Respondents: Mr.M.Devaraj for R1

Mr.T.S.Baskaran for R3

O R D E R

The petitioner, prima facie appears to have aggrieved with regard to certain irregularities in the manner of conducting election for election of office bearers for the General Council Committee of the State Banks' Staff Union.

2. Facts leading to the filing of this writ petition, briefly narrated, are as follows:

2.1. The petitioner would state that he is working as an Associate in State Bank of India, Regional Branch Office IV, Zonal Office, Coimbatore for the past 8 years. The third respondent had issued Circular No.104 dated 29.04.2016, informing the decision of the Central Committee of the Staff Union to hold the 36th General Council Meeting to be held on 11th and 12th of June 2016 at Kalaingar Arangam, Anna Arivalayam, Teynampet, Chennai. The second respondent had also issued Circular No.105 dated 30.04.2016 informing about the election of office bearers in terms of Bye-Law No.16 of State Bank Staff Union; however it failed to provide statement of accounts and the auditors reports for the years ended 2012, 2013, 2014 and 2015 and also not furnished the same to all the branches in Tamil nadu approximately numbering 1000, who are having the staff strength of 10,000 for their scrutiny, observations and objections.

2.2. The petitioner would further state that the Circulars are silent about the formation of election committee and according to him, till the date of filing the writ petition, it was not yet formed and the same is in violation of Bye-Law No.4(v). The petitioner filed his nomination on 18.05.2016 in form Appendix III - Nomination Form L with relative number of the post as 'XV' of the State Bank's Staff Union (Chennai Circle) for the triennial conference period 2016-2019. However, the filing of the nomination was not acknowledged. It is also contended by the petitioner that Rule 4(i) of the Bye-Law and Rules, State Bank Staff Union 2013 have not been followed for the reason that election committee has not been formed and further, in accordance with

to nominate a committee consisting of members

from among the non-contesting members of the General Council for the conduct of the elections of the General Council.

2.3. The petitioner also expressed grievance that two circulars in Circular No.111 came to be issued on 20.05.2016 which are contrary to each other and further that his nomination has been improperly rejected to enable the Staff Union to elect most of the office bearers unopposed and the said acts of the respondents are arbitrary, unreasonable, illegal and not in consonance with Bye-Laws framed by the State Banks' Staff Union and therefore, came forward to file the present writ petition.

3. The petitioner, pendency of the writ petition, filed WMP.No.16145 of 2016 praying for an order of ad-interim injunction restraining the respondents from conducting election without forming the election committee as per the Bye-Law pending, disposal of the writ petition and also filed WMP.No.16146/2010 praying for an appropriate direction directing the respondents to accept his nomination and this Court, vide order dated 24.05.2016, has ordered Notice of Motion and recorded the fact that in the light of Rule 4(ii), the non-contesting members of the General Council should conduct the election, whereas, in this case, the notification for the conduct of election was issued by Thiru.D.Singaravelu, who is the present General Secretary of the State Banks' Staff Union and who has filed nomination contesting for the said post in the ensuing election and accordingly, granted an order of ad-interim injunction as prayed for.

4. The third respondent had filed WMP.No.16305 of 2016 to vacate the interim order and in the affidavit filed in support of the said petition it is averred among other things that the third respondent is a Staff Union registered under the provisions of Trade Unions Act and having 9000 members on its own and took a preliminary objection that the grievance expressed by the petitioner regarding conduct of the election of the Staff Union will not affect the fundamental rights guaranteed under the Constitution of India and therefore, the writ petition is not maintainable. The third respondent, as regards the merits of the case, has referred to the various Bye-Laws and Rules, 2013 of the State Bank Staff Union and would submit that the petitioner was one of the elected delegates from the Sub-Office Coimbatore for the General Council Meeting to be held on 11th and 12th of June 2015 and is also eligible to contest for the said post and accordingly, submitted a nomination form on 18.05.2016 and on 20.05.2016, after the closure of time for submission of nomination, the nominations were scrutinized by the team of Headquarters office bearers and it was found that the nominations which are

not in order or not presented as per Bye-Law were rejected or invalidated and a Circular dated 20.05.2016 was also sent containing the list of nominations to the Central Committee by way of e-mail and after sending it, it was found that some mistakes had crept in with regard to inclusion of a name of an invalidated nominee and also wrongly mentioning the withdrawal as 25.06.2016 instead of 25.05.2016 and due to inadvertent mistake, another circular dated 20.05.2016 came to be issued and therefore, it cannot be said that the said Circulars of same numbers are contrary to each other.

5. It is further stated by the third respondent that the petitioner has submitted his nomination on 18.05.2016 quoting the Bye-Law provision as 17.7 which relates to office of Assistant General Secretaries and in the column for the post, it is stated as Deputy General Secretary and since there is a discrepancy with regard to the name of the contesting post, it was duly communicated to the petitioner through speed post on 21.05.2016 and it was delivered to him on 23.05.2016 and on the same day, the petitioner has submitted a representation by way of fax without disclosing about the invalidation. The petitioner would further state that for the conducting of 36th General Council meeting to be held on 11th and 12th of June this year, enormous expenditure have been incurred and expecting about 6000 participants for the inaugural session and at the last moment, the petitioner by filing the present writ petition, obtained interim orders stalling the entire selection process. Insofar as non-compliance of Rule 4(ii) is concerned, it is stated by the third respondent that only on the date of General Council Meeting, the President will nominate a committee at the venue for conduct of the election and the said stage has not reached and the petitioner is under mis-apprehension that one of the contestant namely, Thiru.Singaravelu may become part of the committee and it is baseless. It is further stated by the third respondent that as per Bye-Law 43, the General Secretary/third respondent is responsible for all the duties which are necessary for achieving the objectives of the Union and he shall alone conduct all correspondences, convene all meetings and therefore, all circulars/communications were sent in his name. The third respondent would further contend that challenging the rejection of nomination form, the Secretary filed writ petition praying for disposal of the representation and since the election process has already commenced coupled with the fact that the third respondent is not amenable to the jurisdiction of this Court under Article 226 of the Constitution of India, prays for dismissal of this writ petition with costs.

6. The petitioner/party-in-person has drawn the attention of this Court to the following judgments,

(i) S.Valaiyapathy v. Indian Overseas Bank [2013 Writ L.R. 1110]

(ii) Sudha v. President, Advocates Association, Chennai and Others [(2010) 14 SCC 114]

(iii) Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others v. V.R.Rudani and Others [(1989) 2 SCC 691]

(iv) State Bank of India Staff Association and another v. State Bank of India and Others [(1996) 4 SCC 378]

and would submit that since the third respondent Union is utilizing the premises of the public sector Bank, which also provides for amenities, this Writ Petition is maintainable. On the merits of the case, it is contended by the petitioner/party-in-person that the relevant Bye-Laws pointed out above have been violated with impunity and efforts have been taken to see to that all the important posts are filled up through selection by way of non-contest and that is why, nomination of the petitioner has been improperly rejected. It is the further submission of the petitioner/party-in-person that he is yet to be issued with amended Bye-Laws and Rules 2013 of the third respondent and therefore, he submitted his nomination as per old Bye-Laws and in the light of the infirmities pointed out above, prays for allowing of this writ petition.

7. The learned counsel appearing for the third respondent, by placing reliance on the following orders,

(i) Order of this Court dated 12.09.2006 made in W.P.No.2070 of 2005

(ii) Division Bench Judgment of the Rajasthan High Court in O.P.Gupta v. Union of India and Others [2001(1) WLN 418]

(ii) Order of this Court dated 03.12.2008 made in W.A.No.1400 of 2008

would submit that the writ petition, per se is not maintainable and since the election process has already commenced, remedy open to the petitioner, if any, is to await for the culmination of election and thereafter, shall make a challenge before the competent civil forum. The learned counsel appearing for the third respondent, on the merits of the writ petition, would contend that the Bye-Laws and Rules 2013 of the third respondent have been scrupulously followed and since the nomination submitted by the petitioner was not in order, it was rightly rejected and though the petitioner has been served with the communication, he merely filed a Writ of Mandamus and got interim orders stalling the election process and prays for dismissal of the writ petition with

8. The learned counsel appearing for the first respondent would contend that the Chairman of the State Bank of India has nothing to do with the election process and since he is neither a proper party nor a necessary party, the writ petition as against him may be dismissed with costs.

9. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

10. The following questions arises for consideration:

(I) Whether this writ petition is maintainable in the facts of the present case?

(II) Whether the respondents are to be directed to constitute a Election Committee and restart the election process in terms of Rule 4(ii) of the State Banks' Staff Union Bye-Laws and Rules, 2013?

Question No.I

11. In *S.Valaiyapathy v. Indian Overseas Bank, Chennai* [2013 Writ L.R. 1110] the issue that retired employees cannot be the members and office-bearers of the Union came up for consideration and the learned Judge suggested to amend Sections 6 and 22 of the Trade Unions Act curtailing outsiders being elected as members as well as office bearers of association/union and also forbear the first respondent/Indian Overseas Bank from permitting the retired employees to participate in the negotiations and discussions with the Bank management in respect of any matter pertaining to employer-employee relations of the bank. The said order was put to challenge and a Division Bench of this Court had reversed the said order and held that in the light of the provisions of the Trade Unions Act, there is no bar for outsiders to act as office bearers of the Trade Union/association.

12. The decision in *Sudha v. President, Advocates Association, Chennai and others* [(2010) 14 SCC 114] relied on by the petitioner has no application to the case on hand for the reason that it arose out of Civil Court proceedings.

13. The decision in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others v. V.R.Rudani and Others* [(1989) 2 SCC 691] also has no application to the facts of this case for the reason that the concerned institution was paid with Government aid and therefore, the writ petition was held to be maintainable.

14. A Division Bench of Rajasthan High Court in *O.P.Gupta v. Union of India and Others* [(2001) 1 LLJ 831] has considered the election for the post of office bearers in Triennial Election 2000-2003 of Associate Banks Officers Association Unit State Bank of Bikaner and Jaiper and it is relevant to extract para 7 of the said judgment:

"7. It is seen from the record that the writ petition has been filed with reference to an election of an Association, a Trade Union registered under the Trade Union registered under the Trade Unions Act. It is settled by a catena of decisions that an election of an Association is a matter of internal management of Association wherein no fundamental right or legal right of the appellant-petitioner is involved and consequently, the appellant petitioner cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India. It is also settled by many rulings of the Apex Court that the word 'election' comprehends the entire process starting from the notification calling upon the Association to elect the office bearers and culminating in the candidate being declared elected. A person aggrieved by any election process is expected to wait till the election results are announced and then challenge the same by filing a Suit or an election petition. This proposition of law has been laid down by then Hon'ble Supreme Court in the case of *N.P.Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem*. In the said decision, the Supreme Court has held:

"Where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of". सत्यमेव जयते

15. A Division Bench of this Court in the judgment dated 03.12.2008 made in W.A.No.1400 of 2008 has dealt with the dispute relating to All India Postal Employees Union Group 'C' and held that the dispute relating to holding of election of incorporated bodies cannot be challenged before the writ Court and it is relevant to extract para 5 of the said judgment:

"5.We, therefore, hold that all disputes relating to holding of election of such incorporated bodies which are nothing but private bodies, cannot be challenged before the writ court. If there are disputes between the parties over such election, those disputes can be challenged, if so advised, before the appropriate civil Court. Since

not maintainable, this Court is of the opinion that no order can be passed in the writ petition on the dispute relating to the election of such trade union. It may be noted in this connection that these private bodies are not enforcing any statutory direction by filing such writ petition inasmuch in the State of Tamil Nadu, there is no law relating to grant of recognition to a trade union, nor is there any law relating to holding of election of such trade unions. These matters are covered by general law and as such, the disputes in this regard should be settled by civil Court."

16. In yet another order dated 12.09.2006 made in W.P.No.2070 of 2005, the dispute relating to Dakshinamara Nadar Sangam came up for consideration and this Court placing reliance upon the following decisions:

- (i) A.Babu Rao v. Bar Council of Tamil Nadu [2005 WLR 733]
- (ii) Anugrah Narain Singh v. State of U.P. [(1996) 6 SCC 303]
- (iii) Lakshmi Charan Sen v. A.K.M.Hassan Uzzaman [AIR 1985 SC 1233]
- (iv) Boddula Krishnaiah v. State Election Commissioner [AIR 1996 SC 1595]
- (v) N.P.Ponnuswami v. Returning Officer, Namakkal [AIR 1952 SC 64]
- (vi) Umesh Shivappa Ambi v. Angadi Shevaka Basappa [AIR 1999 SC 1566]
- (vii) Kalla Ramakrishna v. State Election Commission [(2005) 26 All India Cases 764]
- (viii) C.M.S.Evangelical Suvi David Memorial Higher Secondary School v. The District Registrar, Cheranmahadevi [(2005) 2 CTC 161]
- (ix) Tamil Arasan v. R.Narayanan [2005 (1) CTC 399]

wherein it has been held that once the election process has commenced, the Court should not interfere until the election results are declared and even then the Court can come into the picture only when an election petition is filed under the relevant statutory provision, or if there is no such provision for filing an election petition, then by filing a civil suit.

17. The third respondent Union is not performing any public duty and it is not even the case of the petitioner that is is receiving any aid from Government sources for running its affairs and that apart, the issue relates to election

process, which has already commenced and the 36th General Counsel Meeting of the Union is scheduled to be held on 11th and 12th of June 2016 to elect office bearers, whose nominations have already been scrutinized and accepted. In the light of the above said categorical pronouncements coupled with the fact that the election process once commenced cannot be challenged until the culmination of election process and the remedy open to the aggrieved party, if any, is to challenge the same after the culmination of election process by approaching the competent civil forum to try the election dispute, this Court is of the view that this writ petition is not maintainable. Therefore, Question No.I is answered in negative against the petitioner.

Question No.II

18. In the light of answer given to Question No.I that the writ petition is not maintainable, this Court cannot go into the merits of the complaint/allegation projected by the petitioner, as it may touch upon the merits. Once this Court holds that the writ petition is not maintainable, it cannot go into the merits of the case which involve adjudication of disputed questions of facts. Therefore, Question No.II is answered accordingly.

19. In view of the reasons assigned above, this Court is of the considered view that this writ petition is not maintainable. Hence, this Writ Petition is dismissed. No costs. Interim Orders granted in WMP.Nos.16145 and 16146 of 2016 are vacated. Hence, WMP.Nos.16145 and 16146 of 2016 are dismissed and WMP.No.16305 of 2016 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

jvm Sub Assistant Registrar

1 cc to Mr.T.S.Baskaran, Advocate, sr.31705
1 cc to Mr.M.Devaraj, Advocate, sr.31305

W.P.No.18397 of 2016

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kra 20.06.2016