

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11564 OF 2019

**KARBHARI SHANKAR BATTASE AND OTHERS
VERSUS
DEEPAK V CHENGEDE AND OTHERS**

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Advocate for the Petitioners : Shri B. B. Yenge
Advocate for Respondent Nos. 1 to 6 : Shri S. G.
Chapalgaonkar and
Shri S. T. Mhaske

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 21st SEPTEMBER, 2019.

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PER COURT :

1. The election officer has been arrayed as respondent No. 1 by name. The petitioners are directed to delete the name of the election officer and instead mention the election officer as respondent No.1. Correction be carried out forthwith.

2. The petitioners are the original applicants before the Industrial Court in Application ICTU No.1/2012. They are aggrieved by the order passed by the Industrial Court dated 27/08/2019, by which, an application Exhibit UA-32 filed by five persons, claiming to be intervener applicants, has been

allowed and certain directions have been issued which read as under :-

- "1) *Application is partly allowed.*
- 2) *The election officer is hereby directed to comply the directions of this court passed below Exh.O-32 and Exh.UA-26 and in compliance of those directions he has to publish revised election programme in accordance with the directions of the Court below Exh. O-32 and Exh.UA-26.*
- 3) *In revised programme right to contest election for managing committee may be given to elected general council members only. Only honorary members can be admitted from outsiders as per Clause -5 of Constitution. As per revised programme election officer to complete entire process of election at the union's head office as per directions in order below Exh.UA-26.*
- 4) *Election officer is also directed to submit copy of revised election programme to this court for information. The election officer is also given liberty to get assistance of this court in case of any doubt or ambiguity in the constitution of Sabha.*
- 5) *No order as to costs."*

3. Considering the order that I am passing, after noting the extensive submissions of the learned Advocates, I am not required to refer to the litigation journey of the original

applicant and respondent before the Industrial Court. Suffice it to say that in the pending proceedings before the Industrial Court, the Kopargaon Taluka Sakhar Kamgar Sabha Sakar Wadi is the applicant through Karbhari Shankar Battase, who claims to be its vice president. The same Union is the respondent through the General Secretary. Several orders have been passed by the Industrial Court. These parties have been before this Court atleast on three occasions. On one occasion, they have travelled to the Honourable Apex Court. Issue is as regards the mis-management of the Union by the office bearers and demand for conducting fresh elections.

4. The short issue involved in this petition which is to be considered by this Court is that five persons namely Nitin, Venunath, Arun, Ramdas and Shantabai approached the Industrial Court vide application Exhibit UA-32. Certain allegations have been made against the election officer and a decision of the election officer dated 19/08/2019 has been challenged before the Industrial Court under Exhibit UA-32. It is also prayed that the appointment of the election officer should be cancelled and another officer of the Industrial Court

or an Advocate may be appointed to act as an election officer.

5. I find that the Industrial Court, Ahmednagar has scribbled an order dated 21/08/2019 on the last page of Exhibit UA-32. Certain words especially in the 6th and 7th line of the handwritten order are not legible to any party and therefore, it is difficult to make out as to what was intended to be written in the order by the learned Member.

6. A serious grievance raised by these petitioners, who are the original applicants, is that Exhibit UA-32 was simply tendered across the bar by the above mentioned five persons before the Industrial Court. The Industrial Court did not order that the say of the applicant and respondents in the matter be called for. Normally, every Trial Court orders as "other side to say". I do not see any such remark. In the absence of the applicants and respondents, the Industrial Court has permitted the intervener to address the Court on 27/08/2019 and the impugned order has been passed.

7. The issue is as to what was the authority for these five

persons to approach the Industrial Court, file an application and seek orders on such application without the original applicants and respondents being heard. The record does not reveal and the learned Advocate for the respondents is unable to point out that these five persons had at any point of time in the said proceedings, filed an application for intervention or that they were permitted to intervene as respondents.

8. The grievance is as to how could the Industrial Court entertain an application from five strangers, since they were not parties to the proceedings and deliver a judicial order without even calling for the say of the other sides.

9. The learned Advocate for the respondents points out from paragraph 2 of the impugned order that these intervenor applicants were not parties to the main application. However, they are elected members of the General Council and previously also and they had applied for directions concerning the election vide Exhibit UA-26. Said application was allowed and the Writ Petition as well as the Special Leave Petition against the said orders were dismissed.

10. In my view, if the Industrial Court noticed that they were not interveners and were not parties to the proceedings as being purely interveners and were frequently approaching the Court in a proceeding to which they were not the parties, it was high time for the Industrial Court to direct them to file an application for intervention. 'Two wrongs cannot make one right'. If the earlier mistake is overlooked, it would not mean that the Learned Member of the Industrial Court should commit the same mistake.

11. I find it necessary to record my displeasure as regards the manner in which the learned Member, Industrial Court Ahmednagar has entertained application Exhibit UA-32 in view of the above factors. When the application was filed on 21/08/2019 and the Industrial Court heard the interveners on 27/08/2019 and has passed the order on the same date, why was the Industrial Court unable to notice the above aspects and direct the original applicants and the respondents to file their say.

12. Considering the above, this petition is partly allowed. The impugned order dated 27/08/2019 is quashed and set aside. Application Exhibit UA-32 is restored to the file of the Industrial Court in application ICTU No. 1/2012.

13. The interveners are permitted to file an application before the Industrial Court to seek intervention in application ICTU No. 1/2012. The said application shall be considered by the Industrial Court after calling for the say of all the litigating parties in the said proceeding and then pass appropriate orders. If their intervention application is allowed, the Industrial Court can proceed to consider Exhibit UA-32 after hearing all the sides and pass an appropriate order.

14. Since this order has been dictated in Court today and in the event the same is not uploaded by Monday 23/09/2019, the petitioners as well as the respondents shall make a solemn statement before the Industrial Court about this order having been dictated in Court and the interveners having been permitted to file an application for seeking intervention.

15. The Industrial Court would consider such application with urgency and the litigating sides to the proceedings pending shall not seek unjustified adjournments for filing their say and for conducting the matter. It is expected that the Industrial Court would decide the application for intervention and then application Exhibit UA-32, as expeditiously as possible and in any case on or before 21/10/2019.

(RAVINDRA V. GHUGE, J.)

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