

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/10/2013

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR

Application No.4867 of 2013
and
O.A.No.808 of 2013
in
C.S.No.711 of 2013

P-1 ALL INDIA OVERSEAS BANK EMPLOYEES UNION
REP.BY ITS GENERAL SECRETARY
NO.763, ANNA SALAI,
CHENNAI 06

Vs

R-1 R.SHANKAR
INDIAN OVERSEAS BANK,
PRINTING AND STATIONERY DEPT
NARAGANA SABHA
CHENNAI 18

R-2 M.VENKATACHALAM
INDIAN OVERSEAS BANK,
STAFF COLLEGE,
ANNA NAGAR,
CHENNAI 40

R-3 A.ASHOK KUMAR

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INDIAN OVERSEAS BANK
AMBATHUR INDUSTRIAL ESTATE BRANCH,
CHENNAI

R-4 P.S.VASUNDARAMANI
SARJOO VILLA P/2,
RAMASAMY STREET, T.NAGAR,
CHENNAI 17

R-5 K.RAJAMANICKAM
NO.34/14,
1ST STREET NETAJI NAGAR,
ENNORE,
CHENNAI 57

R-6 N. SRIDHARAN
CHARIMAN
ELECTION COMMITTEE
34TH GENERAL COUNCIL MEETING
AIOBEU
763 ANNA SALAI
CHENNAI 2

R-7 INDIAN OVERSEAS BANK
REP BY ITS CHAIRMAN AND MANAGING DIRECTOR
763 ANNA SALAI
CHENNAI

R-8 MR L BALASUBRAMANIAN
8 BHOPATHY ST
VIRUGAMBAKAM
CHENNAI 92

R-9 MR. S. SRINIVASAN
NL6/20/4 SECTOR 9
NERUL EAST
NAVI MUMBAI 400 706

ORDER

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Application No.4867 of 2013
and O.A.No.808 of 2013
in C.S.No.711 of 2013

R.SUDHAKAR,J.

The first defendant in the suit has filed A.No.4867 of 2013 under Order XIV Rule 8 of the Original Side Rules read with Section 151 of the Code of Civil Procedure to permit the declaration of the results of the first defendant/Union in the elections held on 20.10.2013 during the pendency of the suit.

2. The plaintiffs in the suit filed O.A.No.808 of 2013 under Order XIV Rule 8 of the Original Side Rules read with Order XXXIX Rules 1 and 2 of the Code of Civil Procedure to grant an order of interim injunction restraining the second defendant from conducting any election for posts in the Regional Committee and the National Executive Committee of the first defendant/Union in the 34th General Council of the first defendant/Union scheduled to be held on 20.10.2013 pending disposal of the suit.

3. For the sake of convenience, the parties are referred to as per their rank in the suit.

4. The suit has been filed by the plaintiffs, who are members of

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the first defendant/Union, primarily challenging the Election Committee Circular No.1/2013, dated 23.9.2013 issued by the second defendant with regard to the conduct of elections to the various posts in the Regional Committees and the National Executive proposed to be held on 20.10.2013. That apart, the plaintiffs seek grant of permanent injunction restraining the second defendant from conducting any election for the posts in the Regional Committees and the National Executive Committee of the first defendant/Union in the 34th General Council of the first defendant/Union scheduled to be held on 20.10.2013; declaration that the nominations filed by defendants 4 and 5 to contest for the post of President and General Secretary respectively of the first defendant/Union scheduled to be held on 20.10.2013 as invalid, null and void and illegal, and for other reliefs.

5. The suit was presented on 17.10.2013 and the same was admitted on 18.10.2013. This Court passed the following order on 18.10.2013:

"Heard Mr.M.Venkatachalapathy, learned Senior Counsel appearing for the plaintiffs and Mr.Lakshmi Narayanan, learned counsel appearing for the respondents 1, 4 and 5/Caveator and R.Ramesh, the learned counsel who undertakes to file vakalat for the second respondent.

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Let the election scheduled to be conducted on 20.10.2013 shall go on and the result shall be withheld till 23.10.2013.

The counter of respondents by then.

Call on 23.10.2013."

6. The Election Committee Circular No.1 of 2013 was issued on 23.9.2013 and the schedule for conducting elections in the 34th General Council Meeting is as follows:

A) Last date for filing Nominations	07-10-2013 up to 6 P.M.
B) Publication of valid Nominations	08-10-2013
C) Last date for receipt of Withdrawals	11-10-2013 up to 6 P.M.
D) Publication of Final list of Nominations	12-10-2013
E) Date of Election (Between 7.30 A.M. & 12.30 P.M. at Conference Venue)	20-10-2013
F) Counting of Votes	20-10-2013 from 1 P.M. onwards

7.1. The main issue raised by Mr.M.Venkatachalapathy, learned Senior Counsel appearing for the plaintiffs is that defendants 4 and 5, who are admittedly Honorary Members of the first defendant/Union, have not been duly authorized after their retirement, as Honorary Members and therefore they are ineligible for participation in election and hence, the acceptance of their nominations for election is bad. On this premise injunction is sought for. To expatiate the above said

contention, he referred to Clauses 4(a) and 4(b) of the Bye-Laws of All India Overseas Bank Employees' Union, which read as under:

"4. Membership:-

a) Members: Any person employed/engaged by Indian Overseas Bank and who is not below the age of 18 and not belonging to supervisory cadre shall be enrolled as ordinary members of the Union, provided he agrees to abide by the rules and the byelaws of the Union. The term "employees" shall include probationers, apprentices, appraisers, thrift deposit collectors, temporary employees, etc., employed/engaged by the Bank. Ordinary members normally after retirement from the Bank service shall not continue to be such members.

b) Honorary members: Persons who are not eligible to be ordinary members under Cl.4(a) but are in the sympathy with the objects and principles of the Union may be admitted as Honorary Members by a resolution of the General Council of the Union for the purpose of being elected to National Executive and shall be Honorary Members of the Union during the period of office subject to provisions of Sec.22 of the Indian Trade Union Act 1926. The number of Honorary Members so admitted in any case shall not exceed six for the time being. Honorary Members may make any contribution towards the funds of the Union as they like. The Honorary Members shall also be members of General Council. The National Executive shall also be

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entitled to admit Honorary Members subject to the number fixed above."

7.2. To buttress the above said plea, the learned Senior Counsel appearing for the plaintiffs relied upon a decision of the Supreme Court in *State Bank of India Staff Assn. v. State Bank of India*, (1996) 4 SCC 378, more particularly, paragraph (13), wherein it was held as follows:

"13. The contention that by a resolution passed in the Circle General Council on 16-10-1994 M.R. Awasthy was elected as an honorary member of the Association within the meaning of Rule 6 of the Staff Association Rules which resolution was subsequently affirmed/approved in the meeting of the Central Committee on 19-11-1994 does not hold good for two reasons. Firstly, no material has been placed on record to show that there was any such resolution as alleged having been approved in the meeting of the Central Committee on 19-11-1994, whereby M.R. Awasthy is said to be elected/accepted as an honorary member of the Union after his retirement. Secondly, even if it is assumed that there was such a resolution the same was premature and in respect of a non-existing matter which was not obtainable either on 16-10-1994 or on 19-11-1994 as the question of M.R. Awasthy being an honorary member would have arisen only after 31-1-1995 on his retirement provided he was so elected in accordance with Rule 6 of the Staff Association Rules."

7.3. The learned Senior Counsel appearing for the plaintiffs also relied upon a decision rendered by the learned Single Judge of this Court dated 11.10.2013 in W.P.No.23609 of 2013.

8. Mr.A.L.Somayaji, learned Senior Counsel appearing for the first defendant/Union, who have filed an application seeking declaration of the results of the elections held on 20.10.2013, submits that defendants 4 and 5 are rightfully entitled to participate in the elections in view of the following facts:

(i)in the year 2010, the fourth defendant was elected as President and the fifth defendant was elected as Secretary and they retired on 30.6.2012 and 31.3.2012 respectively;

(ii)the General Council, in its meeting held on 18.7.2010, admitted defendants 4 and 5 as Honorary Members and this admission of defendants 4 and 5 as Honorary Members is ratified by the National Executive in the meetings held on 29.1.2012 and 20.4.2013;

(iii)defendants 4 and 5 continue to be members of the Union and that is recorded in the order of the learned Single Judge dated 11.10.2013 in W.P.No.23609 of

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2013, which order has been challenged by filing a Writ Appeal and has been stayed for other reasons. Their further continuation as Honorary Members is not in dispute.

9. The point in issue is whether defendants 4 and 5 are liable to be enjoined from participating in the elections and whether the first defendant/Union should be restrained from accepting their nominations and proceeding further with the elections.

10. The fact that defendants 4 and 5 are admitted as Honorary Members of the first defendant/Union is not in dispute and their admission has been ratified by the National Executive in the meetings held on 29.1.2012 and 20.4.2013. The said resolutions are not challenged by the plaintiffs, who are admittedly members of the first defendant/Union, so far. Therefore, it is deemed acceptance. Once defendants 4 and 5 are Honorary Members, they are entitled to participate in the elections.

11. The objection of the plaintiffs is that defendants 4 and 5 have not been admitted as Honorary Members post retirement and, therefore, they have become ineligible to contest in the elections. A perusal of the Bye-Laws of All India Overseas Bank Employees' Union

shows that there is no bar for an Honorary Member to participate in the election. The Court, for the nonce, is not inclined to grant any interim order merely on the basis that there is no resolution passed post retirement of defendants 4 and 5, when concededly the resolution admitting them as Honorary Members holds good. There is no bar to deny admission prior to retirement. The Bye-Laws do not prohibit. Prima facie, this has to be taken note of.

12. The plaintiffs were members of the very same Union, which is represented by the General Council, which has admitted defendants 4 and 5 as Honorary Members. They were cognizant of the fact that defendants 4 and 5 were continuing as Honorary Members and, therefore, to plead that they are ineligible at the fag end of the election process would not be in consonance with principle of law that the election process should not be stalled once it has been initiated. The Supreme Court in *N.P.Ponnuswamy v. Returning Officer, 1952 SCR 218* has emphatically held that once the electoral process has been set in motion, jural interference or interdiction is legally inappropriate. The said decision has been favourably received in several subsequent decisions of the Supreme Court in *Dr.Narayan Bhaskar Khare v. Election Commission of India, AIR 1957 SC 694*, *Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405*, *The Election Commission of India v. Shivaji, AIR 1988 SC 61*, *Boddula*

Krishnaiah v. State Election Commission, A.P., (1996) 3 SCC 416, Lakshmi Charan Sen v. A.K.M.Hassan Uzzaman, AIR 1985 SC 1233, Ram Phal Kundu v. Kamal Sharma, (2004) 2 SCC 759 and Manda Jaganath v. K.S.Rathnam, (2004) 7 SCC 492. The plaintiffs have participated in the election process and, therefore, their remedy would be only to challenge the election on any ground that they may choose to.

13. The decision of the Supreme Court in *State Bank of India Staff Assn. v. State Bank of India*, supra, relied upon by the learned Senior Counsel appearing for the plaintiffs does not really apply to the present case, as in the reported case one Awasthy was not shown to be elected as Honorary Member and, therefore, there was no question of his participating in the proceedings. All that is stated in the judgment is that he was not elected in accordance with Rule 6 of the Staff Association Rules.

14. In the case on hand, the validity of the election of defendants 4 and 5, prior to their retirement, as Honorary Members by the General Council and the consequential ratification by the Executive Committee has not been challenged by any one of the members of the first defendant/Union or the plaintiffs till date. Therefore, for the nonce, it should be taken that defendants 4 and 5 are valid members

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of the Union holding the post of Honorary Members.

15. For the foregoing reasons, *prima facie* this Court is not inclined to grant an order of interim injunction as sought for by the plaintiffs. The restraint imposed vide order dated 18.10.2013 is raised and the results of the election held on 20.10.2013 are directed to be declared forthwith.

In the result, O.A.No.808 of 2013 is dismissed and A.No.4867 of 2013 is allowed.

24.10.2013

Index : Yes
Internet : Yes

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R.SUDHAKAR,J.

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