

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 18.08.2020

Delivered On : 23.09.2020

C O R A M

The Hon'ble Mr. A.P.SAHI, THE CHIEF JUSTICE
and
The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Appeal Nos.606 and 450 of 2020

and

CMP.Nos.6968, 8424 and 8426 of 2020

W.A.No.606 of 2020

M.Umapathy

...Appellant/Petitioner

..vs..

1. The Joint Commissioner of Labour-I,
(Registrar of Trade Union),
DMS Complex, Teynampet,
Chennai - 600 006.
2. All India Overseas Bank Employees Union,
Rep. by its General Secretary,
No.763, Anna Salai,
Chennai - 600 002.
3. S.C.Balaji
General Secretary,
All India Overseas Bank Employees Union,
No.763, Anna Salai,
Chennai - 600 002.
4. S.Padmanabhan
Treasurer,
All India Overseas Bank Employees Union,
No.763, Anna Salai, Chennai - 600 002.
- 5.R.Parthasarathy
- 6.S.Mohan
- 7.R.Balaji
- 8.S.Narayanan
- 9.S.Varadharajaperumal
- 10.R.Kumar

11.M.Ravi
12.M.Elangovan
13.V.Jagadeesan
14.S.Saravanakumar
15.G.Suriyakumar
16.N.Sankar

...Respondents/Respondents

W.A.No.450 of 2020
S.Mohan

...Appellant/Respondent

..VS..

1. M.Umapathy
2. The Joint Commissioner of Labour-I,
(Registrar of Trade Unions)
DMS Complex, Teynampet,
Chennai - 600 006.
3. All India Overseas Bank Employees Union,
Rep. by its General Secretary,
No.763, Anna Salai,
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General Secretary,
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6.R.Parthasarathy
7.R.Balaji
8.S.Narayanan
9.S.Varadharajaperumal
10.R.Kumar
11.M.Ravi
12.M.Elangovan
13.V.Jagadeesan
14.S.Saravanakumar
15.G.Suriyakumar
16.N.Sankar

... Respondents/Respondents

PRAYER IN W.A.NO.606 OF 2020: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order of the learned Judge made in W.P.No.35349 of 2019 dated 21.02.2020 and allow the writ appeal.

PRAYER IN W.A.NO.450 OF 2020: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order dated 21.02.2020 in W.P.No.35349 of 2019 and allow the appeal.

PRAYER IN W.P.No.35349 of 2019: praying to issue a Writ of Mandamus to direct the 1st respondent to enquire into the complaint made by the petitioner dated 30.11.2019 and 12.12.2019 and also to direct the 1st respondent either by himself or through his nominee or by an Advocate Commissioner appointed by this Court to conduct 36th General Council Meeting to be held at Thanjavur on 11th January, 2020 and election of office bearers on 12th of January, 2020 strictly in accordance with the existing Bye-laws/ Rules of the 2nd Respondent Union and not to permit any amendment by Bye-laws/Rules regarding continuation of retired employee as office-bearer of the 2nd Respondent Union.

For Appellants : Mr.Perumbulavil Radhakrishnan
counsel for the Appellant in
WA.No.450/20

Mr.K.M.Ramesh
counsel for the Appellant in
WA.No.606 /20
and R-1 in W.A.No.450/20

For Respondents : Mr.Emalias
R2 to R4 in W.A.No.606/20
R3 to R5 in W.A.No.450/20

Mr.R.Parthasarathy
Party in person, for R-6 in
W.A.No.450/20 and R-5 in
W.A.No.606/20

Mr.C.K.Chandrasekaran
for R7 to R16 in both appeals

COMMON JUDGMENT

SENTHILKUMAR RAMAMOORTHY J.,

The Appellant in W.A. No.606 of 2020 was the Petitioner in W.P. No.35349 of 2019. He submitted two representations/complaints dated 30.11.2019 and 12.12.2019 to the Registrar of Trade Unions complaining about irregularities in the functioning of the All India Overseas Bank Employees' Union (the Trade Union). Being dissatisfied with the lack of response to the said representations, he filed W.P. No.35349 of 2019 praying

for a writ of mandamus to direct the Registrar of Trade Unions/first Respondent to enquire into the complaints made by him on 30.11.2019 and 12.12.2019 and to direct the first Respondent to conduct the 36th General Council Meeting on 11.01.2020 and the election of office bearers on 12.01.2020 strictly in accordance with the existing Bye-laws of the Trade Union and not to permit any amendment regarding continuation of retired employees as office bearers of the Trade Union.

2. In the said writ petition, by order dated 06.01.2020, the Court appointed an Advocate Commissioner to monitor the 36th General Council Meeting at Thanjavur on 11.01.2020 as well as the election of office bearers on 12.01.2020 and to file a report thereon before the Court. Pursuant thereto, the Advocate Commissioner filed a report dated 27.01.2020. Written objections were filed by the Appellant/Petitioner to the Advocate Commissioner's report on 09.02.2020. Eventually, by order dated 21.02.2020, the Court took note of the fact that both the General Council Meeting and the election of office bearers were conducted. The Court also took note of the fact that the Petitioner and the contesting Respondent were taking contrasting and contradictory positions as to whether the General Council Meeting and the election of office bearers were conducted properly. Therefore, the Court disposed of the writ petition by stating that an election dispute should be raised before the appropriate forum in accordance with the procedure prescribed for such purpose. On that basis, the writ petition was disposed of. However, the Court directed the parties to maintain the status quo until 09.03.2020. Pursuant to the said order, the Appellant in W.A. No.606 of 2020 states that a civil suit has been filed to challenge the General Council Meeting and the election of office bearers. An ex-employee of the Trade Union, who is a 3rd party, filed W.A. No.450 of 2020 to challenge the order of the writ court. These appeals raise common issues; therefore, they were heard jointly and are disposed of by this common judgment.

3. We heard Mr.K.M.Ramesh, the learned counsel for the Appellant in W.A.No.606 of 2020 and for the first Respondent in W.A.No.450 of 2020; Mr.Perumbulavil Radhakrishnan, the learned counsel for the Appellant in W.A.No.450 of 2020; Mr.C.K.Chandrasekaran, the learned counsel for Respondents 7 to 16 in both writ appeals; Mr.Emalias, the learned counsel for Respondents 2 to 4 in W.A.No.606 of 2020 and for Respondents 3 and 4 in W.A. No.450 of 2020; and Mr.R.Parthasarathy, party-in-person for R-6 in W.A.No.450 of 2020 and R-5 in W.A.No.606 of 2020.

4. The first contention of Mr.K.M.Ramesh was that the writ petition was filed because the Registrar of Trade Unions did not

initiate appropriate action in response to the representations dated 30.11.2019 and 12.12.2019. According to Mr.Ramesh, the writ petition was maintainable for the said purpose. As regards the conduct of the General Council Meeting and the election of officer bearers, he pointed out that the Advocate Commissioner was appointed only to monitor the conduct of the said General Council Meeting and election of office bearers. However, the Advocate Commissioner exceeded his mandate and played an active role by presiding over the said meeting. Therefore, the Appellant/Petitioner was constrained to file written objections to the report of the Advocate Commissioner. He further contended that the General Council Meeting and the election were vitiated by the manner in which proceedings were conducted. As regards the Bye-laws of the Trade Union, he contended that the said Bye-laws originally did not permit ordinary members to continue as members after their retirement. However, by an amendment made on 22.07.2017, Bye-law 4 was amended by permitting persons who have retired to continue as members if they are sympathetic to the objectives and purposes of the Trade Union. According to Mr.Ramesh, the said amendment was made unlawfully so as to enable certain retired employees, such as the Appellant in W.A. No.450 of 2020, to participate in the affairs of the Trade Union. He also relied upon the judgment of the Hon'ble Supreme Court in State Bank of India Staff Association and another v. State Bank of India and others (1996) 4 SCC 378 in support of the contention that retired employees should not be permitted to participate in the affairs of a trade union.

5. Mr.C.K.Chandrasekaran made submissions in response. His first contention was that the writ petition was not maintainable because a trade union is a private juristic person. Consequently, a writ of mandamus does not lie. He next submitted that the Appellant in W.A. No.606 of 2020 approached the Court and requested for the appointment of an Advocate Commissioner to monitor the General Council Meeting and the election of office bearers. Therefore, it is not open to the writ petitioner to complain about the interim order of the High Court, whereby an Advocate Commissioner was appointed to monitor the General Council Meeting and the election of officer bearers. As regards the amendment to the Bye-laws of the Trade Union, he contended that the Trade Unions Act, 1926 (the Trade Unions Act) permits trade unions to amend their Bye-laws in accordance with the prescribed procedure. Bye-law 4 which pertains to membership of the Trade Union was duly amended in accordance with Section 28 of the Trade Unions Act. Therefore, he contended that the Appellant does not have a legal right to challenge the said Bye-laws.

6. Mr.Perumbulavil Radhakrishnan contended that retired employees are entitled to be ordinary members. The Trade Union collected membership fees and even corpus fund contribution for its building from his client and therefore he cannot be ousted from membership. He further contended that the writ petition was not maintainable and that the conduct of the General Council Meeting and the election of the office bearers should have been carried out as per the Bye-laws of the Trade Union without the interference of the Advocate Commissioner appointed by the Court. As a result of the appointment of the Advocate Commissioner and the active role played by the Advocate Commissioner, the General Council Meeting and the election of the officer bearers are vitiated. Therefore, he submitted that all proceedings that took place pursuant to the orders passed in the writ petition are liable to be set aside.

7. Mr.Parthasarathy, the party-in-person submitted that an ex-employee is not entitled to be a member as per Section 22(b) of the Trade Unions Act. Therefore, according to him, the amendment to the Bye-laws is contrary to the Trade Union Act.

8. Mr.Emalias, the learned counsel for the Respondents 2 to 4, submitted that the amendment is in accordance with law and the General Council Meeting and the election of the officer bearers should not be interfered with.

9. We considered the submissions of the learned counsel for the respective parties and examined the records.

10. The principal question that arises for consideration is whether the writ petition was maintainable. The admitted factual position is that the first Respondent is a registered Trade Union under the Trade Unions Act, and that it represents the interest of the employees of the All India Overseas Bank. As such, it does not perform statutory duties or functions. The complaint made by the Appellant in W.A. No.606 of 2020 relates to the functioning of the Trade Union. The learned counsel for the Appellant in W.A. No.606 of 2020 contended that the High Court was entitled to direct the Registrar of Trade Unions to pass appropriate orders in respect of the representations of the Petitioner. There is some merit in this contention. However, the prayer in the writ petition was not confined to enquiring into the complaints of the Petitioner and extended to the conduct of the 36th General Council Meeting and the election of officer bearers. After taking note of these aspects, when W.A. No.450 of 2020 was listed for admission on 07.07.2020, this Court passed the following order:

"Heard learned counsel for the appellant and perused the pleadings.

2. It appears that the dispute touching upon holding of General Council Meeting for the purpose of elections of the Society was raised before the learned Single Judge and interim orders were passed by the learned Single Judge in this regard, that have been placed on record, dated 06.01.2020, followed by the orders dated 27.01.2020, and then the ultimate judgment by the same learned Single Judge on 21.02.2020. The learned Single Judge had facilitated the conduct of General Council Meeting and elections to the officer bearers through Advocate Commissioners against which objections were filed, as is evident from the orders referred to herein above.

3. The learned Single Judge while disposing of the matter did not adjudicate the matter on merits and disposed it of on the ground that once elections had been conducted, then it can only be challenged before the appropriate forum and accordingly, relegated the parties to question the elections or its dispute before the appropriate forum.

4. Learned counsel for the appellant contends that the said approach of the learned Single Judge in entertaining the writ petition and then disposing of the matter without even taking notice of the main prayer which had been made in the writ petition amounts to an exercise of excessive jurisdiction and consequently, the impugned judgment cannot stand scrutiny of law.

5. Learned counsel for the first respondent/writ petitioner Mr.K.M.Ramesh contends that he will file response to the appeal and he also proposes to file writ appeal questioning the correctness of the impugned judgment, as the learned Single Judge did not address himself on the main issue, where a mandamus had been sought for a direction to the Registrar of Trade Unions to take appropriate action.

6. In the wake of the aforesaid contentions raised, prima facie, it does appear that the matter will have to be scrutinized. In such circumstances, let the parties exchange their affidavits within six weeks. Notices be issued to the other unserved respondents within ten days and the other respondents may also file response, if they choose, during the period of six weeks.

7. Learned counsel for the first respondent also informs that he has already instituted a suit on the Original Side questioning the holding of

elections and its validity along with other and similar prayers in relation to holding of elections. Let the aforesaid facts be brought on record through appropriate pleadings.

8. In the mean time, the Registrar of Trade Unions shall not proceed to register the list of officer bearers as per the elections held under the directions of the learned Single Judge under the impugned judgment.

List on 18.08.2020."

11. The law on the subject may be considered briefly before we proceed to draw definitive conclusions on the issues raised herein. In *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) 5 SCC 111, while holding that the CSIR qualifies as State for purposes of Article 12, the Court held that mere regulatory control under a statute is not sufficient. Paragraph 40 is as under:

"40. The picture that ultimately emerges is that the tests formulated in *Ajay Hasia* [*Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] are not a rigid set of principles so that if a body falls within any one of them it must, *ex hypothesi*, be considered to be a State within the meaning of Article 12. The question in each case would be – whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

In the specific context of elections to a trade union in *North Eastern Railway Employees Union v. III Additional District Judge, Farukhabad*, (2006) 10 SCC 417, the Supreme Court held that the Registrar of Trade Unions is the authority charged with the duty of administering the provisions of the Trade Unions Act. On that basis, the Supreme Court set aside the High Court order appointing the General Manager, North Eastern Railway, as the authority to conduct the election and instead directed that the election should be conducted under the supervision of the Registrar of Trade Unions. In paragraph 2, it was held as under:

"2. We have heard learned counsel for the appellants as well as contesting Respondents 2, 3 and 4. The Registrar of Trade Unions is the authority charged with the duty of administering the provisions of the Trade Unions Act. The High Court was obviously in error in designating the General Manager, North Eastern Railway as the authority to hold elections of the Trade Union. We accordingly grant special leave, modify the direction made by the High Court and direct instead that the elections will be held under the supervision of the Registrar of Trade Unions or by an officer designated by him for that purpose. The judgment of the High Court stands modified to the extent indicated."

12. Applying these principles to the facts and circumstances, in our view, the conduct of the General Council Meeting and the election of officer bearers should not have been interfered with by the learned single Judge. Indeed, the Writ Court should have declined to exercise jurisdiction on the basis that it is a private dispute between members of the Trade Union relating to, inter alia, the conduct of elections. While writ jurisdiction has been extended to non-state actors, in appropriate cases, such extension has always been only in respect of the exercise of public functions.

13. In this case, the dispute pertains to the conduct of a general council meeting and the election of officer bearers of the Trade Union. There is no doubt at all that the All India Overseas Bank Employees' Union is not discharging public duties or functions. We are also informed that one of the members of the Trade Union has filed a suit, O.S. No.1833 of 2020, before the City Civil Court at Chennai. In the said suit, a declaration has been prayed for that the meetings held on 11.01.2020 and 12.01.2020 and all resolutions passed therein are illegal, invalid and void. The said suit is stated to be pending adjudication. For all these reasons, we conclude that the writ petition was not maintainable. Consequently, we set aside all the orders passed in the said writ petition, including orders relating to the conduct of elections. Needless to say, the parties are at liberty to initiate action in terms of their Bye-laws and the Trade Unions Act in respect thereof. In addition, parties are at liberty to initiate and/or prosecute appropriate legal proceedings so as to redress their private complaints in respect of the affairs, including membership and elections, of the Trade Union.

14. In the result, subject to the above observations, both the writ appeals are allowed and the order dated 21.02.2020 as

well as all earlier orders in W.P. No.35349 of 2019 are hereby set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Joint Commissioner of Labour-I,
(Registrar of Trade Union),
DMS Complex, Teynampet,
Chennai - 600 006.
2. All India Overseas Bank Employees Union,
Rep. by its General Secretary,
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3. S.C.Balaji
General Secretary,
All India Overseas Bank Employees Union,
No.763, Anna Salai,
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4. S.Padmanabhan
Treasurer, All India Overseas Bank Employees Union,
No.763, Anna Salai, Chennai - 600 002.

+1cc to Mr.K.M.Ramesh, Advocate, Sr.No.31316

+4cc to Perumbalavil Radhakrishnan, Advocate, Sr.no.31387

+2cc to Mr.C.K.Chandrasekhar, Advocate, Sr.Nos.31468 & 31469

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Common Judgment in

Writ

Appeal Nos.606 and 450 of 2020 in
CMP.Nos.6968, 8424 and 8426 of 2020

rsv (co)
rr ii (30/09/2020)