

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.35349 of 2019
and
W.M.P.No.36175 of 2019

M.Umapathy

... Petitioner

vs

1. The Joint Commissioner of Labour-I,
(Registrar of Trade Unions),
DMS Complex, Teynampet,
Chennai - 600 006.
2. All India Overseas Bank Employees Union,
rep. by its General Secretary,
763, Anna Salai,
Chennai - 600 002.
3. S.C.Balaji,
General Secretary,
All India Overseas bank Employees Union,
763, Anna Salai,
Chennai - 600 002.
4. S.Padmanabhan
Treasurer,
All India Overseas Bank Employees Union,
763, Anna Salai,
Chennai - 600 002.
5. R.Parthasarathy
(R5 impleaded as per order
dt.6.1.2020 made in WMP.88/2020
in WP.35349/2019 by KRCBJ)
6. S.Mohan
(R6 impleaded as per order
dt.6.1.2020 made in
WMP.216/2020 in W.P.35349/2019
by KRCBJ)
7. R.Balaji
S/o S.Ramasamy

8. S.Narayanan, S/o Shamugam

9. S.Varadharajaperumal
S/o Subramani

10. R.Kumar, S/o J.Ramanujam

11. M.Ravi
S/o M.S.Mani

12. M.Elangovan
S/o Krishnamurthy

13. V.Jagadeesan
S/o Viswalingam

14. S.Saravanakumar
S/o R.M.Sambandam

15. G.Suriyakumar, S/o Govindan

16. N.Sankar
S/o Nandagopal
(R7 to R16 impleaded as per
order dt.6.1.2020 made in
WMP.200/2020 in wP.35349/2019
by KRCBJ)

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India 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 Petitioner : M/s.R.Vaigai, Senior Counsel
for Mr.K.M.Ramesh

For Respondents: Mr.D.Suriyanarayanan,
Addl.Govt.Pleader for R1
Mr.Emalias
for Mr.M.R.Sivakumar for R2,R3 & R4
Ms.S.Meenakshi for R5
Mr.Perumbulavil Radhakrishnan
for R6
Mr.C.K.Chandrasekar
for Mr.T.Moorthy for R7 to R16

O R D E R

This writ petition is filed seeking for a 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.

2. While entertaining the writ petition on 06.01.2020, this Court passed an order appointing an Advocate Commissioner to monitor the 36th General Council Meeting scheduled on 11.01.2020 and Election to the office bearers on 12.01.2020 of the 2nd respondent Union. This Court directed the Advocate Commissioner to file a report, also by specifically directing that the respondents 2 to 4 to furnish the Agenda and relevant Bye-laws/Rules to the Advocate Commissioner so as to enable him to monitor and see that the General Council Meeting as well as the Election are being conducted in accordance with Rules and Bye-laws.

3. The above said order was passed by this Court without expressing any view on the merits of the contentions raised by both parties. Paragraph No.2 to 8 of the said order dated 06.01.2020, reads as follows:

2. Heard Ms.R.Vaigai, learned Senior Counsel appearing for the petitioner, Mr.D.Suriyanarayanan, learned Additional Government Pleader appearing for the first respondent, Mr.M.R.Sivakumar, learned counsel appearing for the respondents 2, 3 & 4, Mrs.S.Meenakshi, learned counsel appearing for the 5th respondent, Mr.Perumbulavi Radhakrishnan, learned counsel appearing for the 6th respondent and Mr.Chandrasekar, learned counsel appearing for the respondents 7 to 16.

3. The grievance of the petitioner before this Court is that the respondents 3 & 4 by advancing the date of 36th General Council Meeting, are trying to pass a resolution empowering the retired employees also to continue as the members of the subject matter Union. It is also their contention that the respondents 3 & 4 are trying to deviate from the procedures contemplated and in existence for conducting

General Council Meeting as well as the election. Admittedly, the General Council Meeting is scheduled on 11.01.2020 and Election to the office bearers of the Union is scheduled on 12.01.2020.

4. The learned counsels appearing for the private respondents/respondents 5 to 16, on the other hand, submitted that the apprehension of the petitioner is not well founded and that the petitioner cannot prevent the General Council from passing any resolution.

5. This Court, at this stage, is not expressing any view on the merits of the contentions raised by both sides, as it is seen that the General Council Meeting is yet to take place on 11.01.2020. It is also seen that the election to the officer bearers is scheduled on 12.01.2020. Since it is apprehended by the petitioner that there is likelihood of breach of the Bye-laws and Rules of the second respondent-Union at the instance of the respondents 3 & 4, at the time of conducting the General council Meeting and the Election, in order to safeguard the interest of both parties, this Court is of the view that an Advocate Commissioner can be appointed to monitor the 36th General Council Meeting and the subsequent Election scheduled on 11.01.2020 and 12.01.2020 respectively, and file a report before this Court so as to enable this Court to decide the matter thereafter.

6. Accordingly, Mr.S.Ilamvaludhi, learned counsel, Madras Bar Association, Cell No.9444195129, is appointed as an Advocate Commissioner to monitor the 36th General Council Meeting to be held at Thanjavur on 11.01.2020 and Election to the office bearers to be held on 12.01.2020 of the second respondent-Union and file a report before this Court on 27.01.2020. The respondents 2 to 4 shall furnish the Agenda to the Advocate Commissioner on or before 08.01.2020. They are also directed to furnish relevant Bye-laws/Rules to the Advocate Commissioner, so as to enable him to monitor and see whether the General Council Meeting as well as the Election are being conducted in accordance with the Rules and Bye-laws.

7. Needless to state that in view of the pendency of this writ petition, any decision or resolution made in the General

Council Meeting and consequent Election conducted thereafter are subject to the result of the writ petition. Initial remuneration payable to the Advocate Commissioner by the second respondent-Union is fixed as Rs.1,00,000/- (Rupees One Lakh only). The Advocate Commissioner is at liberty to take assistance of his juniors, if so warranted.

8. The Registry is directed to issue warrant to Mr.S.Ilamvaludhi, learned counsel, Madras Bar Association, Cell No.9444195129, on 07.01.2020. Post the writ petition for filing such report on 27.01.2020.

4. Consequent upon the said order, the Advocate Commissioner Mr.S.Ilamvaludhi, filed a report dated 27.01.2020 along with typed set of papers dated 27.01.2020. On receiving the said report, this Court adjourned the matter for filing objections, if any, to the said report, also by directing the elected candidates to maintain status quo as on 27.01.2020. Thereafter, when the matter was listed on the earlier occasion, written objections to the said report of the Advocate Commissioner were filed by the writ petitioner, 5th and 6th respondents.

5. From the perusal of the report submitted by the Advocate Commissioner, it is seen that the General Council Meeting as well as the Election to the office bearers of the 2nd respondent Union were conducted on the scheduled dates.

6. Learned counsel for the petitioner submitted that the General Council Meeting and the Election were not conducted strictly in accordance with Bye-laws and therefore, the petitioner is still having grievance.

7. On the other hand, it is contended by the learned counsel appearing for the contesting respondents that the Election and the General Council Meeting were conducted strictly in accordance with Bye-laws.

8. This Court, in this proceedings, is not inclined to proceed with the matter any further based on merits and contentions raised by both parties in respect of the Election and General Council Meeting conducted, since this Court is of the firm view that once the election is conducted, such election has to be challenged only in the manner and procedure known to law before the appropriate Forum. As this Court is of the view that the petitioner has to work out his remedy by filing such separate proceedings before the appropriate Forum, it is not expressing any view on the Commissioner's report as well as the Objections filed against the same. Needless to say that the said report of the Advocate Commissioner as well

as the Objections raised against the same can be placed before the said appropriate Forum, where the petitioner choses to challenge the General Council Meeting and the Election. Since this Court is not expressing any view on the merits of the contentions raised by both sides touching upon the issue raised in this writ petition, it is open to all the parties to raise all the issues before the Forum at which such challenge is made and such Forum will consider those contentions and decide the same on merits and in accordance with law, uninfluenced by observation, if any, made by this Court in this Writ Petition.

9. Mr.K.M.Ramesh, learned counsel appearing for the petitioner seeks ten days time to approach the competent Forum and file appropriate proceedings and till such time, he seeks for extending the order of status quo as on 27.01.2020.

10. It is true that this Court, by order dated 27.01.2020, directed the elected candidates to maintain status quo as on 27.01.2020. In view of the fact that this Court is of the view that the petitioner has to approach the appropriate Forum to challenge the General Council Meeting as well as the Election, it is ordered that status quo granted by this Court on 27.01.2020 shall be in force till 09.03.2020. It is also made clear that status quo granted by this Court and extended now till 09.03.2020 shall not influence the mind of the appropriate Forum, where such challenge is made by the petitioner while considering any interim application, filed by the petitioner, during the pendency of such proceedings, as it is for the said Forum to consider such interim application and pass appropriate orders on the same on merits and in accordance with law, after hearing all the parties. It is also made clear that granting liberty as stated supra, to the petitioner in this writ petition, would also apply to any other aggrieved parties against the General Council Meeting as well as the Election.

11. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

vsi

To

The Joint Commissioner of Labour-I,
(Registrar of Trade Unions),
DMS Complex, Teynampet,
Chennai - 600 006.

+1cc to Mr.K.M.Ramesh, Advocate SR.No.15006

+1cc to Mr.Perumbulavil Radhakrishnan, Advocate SR.No.15261

+1cc to Mr.M.R.Sivakumar, Advocate SR.No.15006 (27/02/2020)

+2cc to Mr.Perumbulavil Radhakrishnan, Advocate SR.No.15261
(28/02/2020)

W.P.No.35349 of 2019

MR (CO)
GMY (24/02/2020)



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