

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-9-2020

Reserved on: 18.09.2020

Decided on: 30.09.2020

Jashanpreet Singh & others

....Petitioners

Versus

U.T.Chandigarh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Prateek Gupta, Advocate, for the petitioners.

Mr.Pankaj Jain, Senior Standing Counsel
with Mr.Lajwant Singh Virk, Advocate,
for respondents No.1 to 3-U.T., Chandigarh.

Mr.D.S.Patwalia, Sr.Advocate
with Mr.Kannan Malik, Advocate, for respondent No.4.

(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. SANDHAWALIA, J.

Challenge in the present writ petition, filed under Article 226 of the Constitution of India, is to the order dated 26.12.2019 (Annexure P-7) passed by respondent No.3, the Registrar, Trade Union, U.T.Chandigarh whereby the election process was quashed and fresh nominations were to be asked for. Similarly, the order dated 27.12.2019 (Annexure P-9) in compliance of the above, the entire election process was cancelled by the respondent No.2 and postal ballots were declared null and void for the entire election process of the office bearers of the Bank of India Officers Association (North-Western Unit) which was set aside. The same is subject matter of challenge, on the ground that the petitioner No.1 was declared elected to the post of President being unopposed. Resultantly, directions are sought to the Election Commissioner-respondent No.2, to conduct the free

and fair election, as per the notification issued with respect to the election, without being influenced by the impugned order.

Contentions:

Counsel for the petitioners has vehemently argued that respondent No.3 had no jurisdiction under the Trade Union Act, 1926 (for short, the 'Act') to set aside the elections which had taken place as there was no such provision under the Act. It is submitted that even otherwise, on merits, the petitioner No.1 had been elected unopposed as President on 14.12.2019 (Annexure P-6) and even if the same had to be challenged by any person aggrieved, he should have done so in accordance with law. It was thus not for the official respondents to act upon the representation of respondent No.4, on the account of lack of jurisdiction. Reference is also made to the merits, as such, as to whether the reasoning on the basis of which the orders have been passed are justifiable or not and therefore, the action suffers from an inherent infirmity.

Mr.Patwalia, Senior Advocate, appearing on behalf of respondent No.4, the General Secretary of the Association, has defended the action on the ground that the same is vitiated by fraud and relied upon the judgment of the Apex Court in **S.P Chengalvaraya Naidu vs Jagannath 1994 (1) SCC 1** that fraud vitiates all proceedings.

Mr.Jain, Senior Standing Counsel, appearing for the Administration, also tried to justify the order of the official respondents on the ground that on account of the representations received from respondent No.4, the action had been taken and therefore, fresh elections

were to be conducted. Therefore, the cancellation of the entire election process was justified.

In the opinion of this Court, the arguments raised by counsel for the petitioners on the issue of jurisdiction, is a legal argument and well founded and based on various judicial precedents and therefore, deserves to be accepted, for the reasoning given below, after noticing the facts which are crystalized as under.

Facts:

Respondent No.2, Election Commissioner was appointed by the Executive Committee of the respondent No.4-Association in a meeting held on 19.11.2019, in terms of the Constitution (Annexure P-1) to hold the elections. Resultantly, he issued the Election Schedule dated 21.11.2019 (Annexure P-2) whereby election was to be held to the posts of various office bearers including President, Vice-President, Joint Secretaries etc. A time schedule was drawn up as to the nomination papers which were to be accepted, which was 05.12.2019. Similarly, the list of nominations were to be notified on 06.12.2019 and withdrawal was permitted by 13.12.2019 by all the contesting candidates who stood for election and polling was to be conducted in case of a contest. The list of contestants were to be announced on the next day after the last day of withdrawal of nomination papers. The petitioners had filled nomination papers for the post of President, Joint Secretary and posts of Vice-President, respectively. On 06.12.2019 (Annexure P-3), the Election Commissioner wrote that the office had received 81 nominations for 26 declared posts and forwarded the list addressed to the Bank Officers

Association. On 13.12.2019, the Election Commissioner addressed email to petitioner No.1 that declaration of withdrawal of nominations could be done by 9.30 AM and requested him that he or his representative be present.

On the request received from the petitioner in email, the Election Commissioner, on 14.12.2019 (Annexure P-5), had come to the conclusion that due to non-consensus by the candidates, it was decided that opening of the withdrawal applications was to be done at 3.30 PM in presence of one representative of the petitioner No.1, Jashanpreet and one representative of respondent No.4.-Gursharan Singh and the whole process was to be covered under video-recording. Resultantly, candidates were asked to be present at the Bank of India, Zonal Office Building, Sector 31-A by 3.30 PM. Resultantly, communication dated 14.12.2019 (Annexure P-6) was issued that out of the 81 nominations, 29 persons had withdrawn and there were 2 double nominations and the final contestants were 50. The list of final list of contestants as an annexure for different posts was put across. The petitioner No.1 was declared as elected unopposed to the post of President on account of withdrawals received.

Resultantly, complaint was received from various persons on 16.12.2019 (Annexure R-4/4) that the Election Commissioner had made severe lapses. The same was forwarded by the General Secretary of the Association to respondent No.3, to look into the allegations and request was made to pass an order directing the Election Commissioner to stay the process of election till further orders and cancel the entire election

process (Annexure R-4/3).

The Election Commissioner, thereafter, on 23.12.2019 (Annexure P-10), gave the details to the members as to when the elections were to be held on account of withdrawal of nominations to the posts of other office bearers. The Association had also appointed a fresh Election Commissioner on 31.12.2019 (Annexure P-11) in pursuance of the resolution dated 27.12.2019 whereby the list of candidates were to be notified on 24.01.2020. The status quo order had been passed on 03.01.2020 when the petitioners had approached this Court.

Counsel for the petitioners has also pointed out from communications dated 13.12.2019 (Annexures P-11 & P-12) whereby Gursharan Singh had withdrawn his nomination for the posts of President and General Secretary. Reference is also made to another communication dated 14.12.2019 whereby the petitioner had acknowledged the email on 13.12.2019, to be present in the office by 9.30 AM and that there was no need for video recording. It is apparent that it is on account of the said complaint dated 16.12.2019 (Annexure R-4/4) respondent No.3 appointed a Labour Inspector to visit the office of the Bank wherein he gave an opinion that the declaration of list of candidates was conducted on 14.12.2019 which was a second Saturday, a bank holiday and the same was done against the Constitution and recommended that the election process be quashed. The Election Commissioner's response had also been sought to which he had replied on 20.12.2019 (Annexure R-3). He justified the action on the ground that the complainant or their representatives had deliberately avoided their presence and now they

were trying to make an issue out of their own folly and the duties had been duly fixed and the envelopes were kept in a sealed cover.

The reasoning given by respondent No.3 to set aside the election process is that the withdrawal of nomination papers was being permitted after 5 PM on 13.12.2019 and was in violation of the election schedule dated 21.11.2019 issued. The final list of contestants had been declared on 14.12.2019 which was a second Saturday, which was against the constitution of M/s Bank of India Officers Association, North-Western Unit and in the absence of the Deputy Election Commissioner. Resultantly, the election process had been quashed on 27.12.2019 (Annexure P-7). In pursuance of the same, the Election Commissioner had also cancelled the entire election process of ongoing elections and asked for return of the postal ballots on 27.12.2019 (Annexure P-9).

The official respondents in their reply sought to justify the action on the ground that the scrutiny process continued till 7 PM and which was a violation of the Election Schedule. Therefore, they relied upon the provisions of Section 6 (h) & (hh) and Section 10 of the Act regarding election of a registered Trade Union and justified the orders passed. The provisions of Section 6 (h) & (hh) and Section 10 of the Constitution read as under:

“6. Provisions to be contained in the rules of a Trade Union.-

A Trade Union shall not be entitled to registration under this Act, unless the executive thereof is constituted in accordance with the provisions of this Act, and the rules thereof provide for the following matters, namely:--

XXXX XXXX XXXX

(h) the manner in which the members of the executive and the

other [office-bearers] of the Trade Union shall be [elected] and removed;

[(hh) the duration of period being not more than three years, for which the members of the executive and other officer-bearers of the Trade Union shall be elected;]

10. Cancellation of registration.- A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar--

(a) on the application of the Trade Union to be verified in such manner as may be prescribed, or

(b) if the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or that the Trade Union has ceased to exist or has wilfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision, or has rescinded any rule providing for any matter provision for which is required by section 6;

(c) if the Registrar is satisfied that a registered Trade Union of workmen ceases to have the requisite number of members:]

Provided that not less than two months' previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate shall be given by the Registrar to the Trade Union before the certificate is withdrawn or cancelled otherwise than on the application of the Trade Union.”

Reasoning:

A bare perusal of the above would go on to show that it provides for registration of the Trade Union and the manner in which the members of the Executive Committee and other office bearers of the Trade Union are elected and removed and the duration of the election of the office bearers. The Constitution of the Association (Annexure P-1) as such provides for election and the procedure of holding the election

programme is to be drawn up. Clause 6(E) of the Constitution reads as under:

“(E) The Programme of Election shall be as under:

- (i) THE Returning Officer shall invite nominations from the members for the various posts in the Executive Committee.
- (ii) The nomination papers shall be filled within fifteen days from the date of notification inviting nominations.
- (iii) The Returning Officer shall announce the list of valid nominations next day after the last day of receiving nominations papers.
- (iv) Withdrawal of nominations shall be allowed in seven days from the date of announcement of valid nominations.
- (v) The list of contestants shall be announced on the next day after the last day of withdrawal of nomination papers.
- (vi) Polling shall be completed within fifty days from the date of notification inviting nomination papers.
- (vii) Ballot papers from the Branches/Offices must reach the Returning Officer, within ten days, from the date of polling.
- (viii) Counting of votes shall start within three days from the last day of receiving ballot papers from Branches/Offices.
- (ix) The Returning officer shall declare the results of the declaration after counting of votes is completed. When there is no contest the result will be declared on the next day after the date of announcement of the list of contestants.
- (x) In case of the last dates as stipulated in the aforesaid clause falls on any public holiday (Including Sunday) the last date shall be extended to the next succeeding working day.
- (xi) Subject to the provision of this constitution, the Returning Officers shall have the right to frame such rules and fix up such programme as may be necessary for him to conduct the election independently in a free and fair manner. The Returning Officer shall submit his report on the conduct of the election in the Annual General Body Meeting convened after the election.

The members who temporarily reside outside of the

jurisdiction for what so ever reason shall have right to vote by postal ballot provided they give their addresses outside their jurisdiction, and a Notice to Election Commissioner in advance.

The Executive Committee shall have right to co-opt not more than five additional members of the Executive Committee from amongst the members for the Association.”

The above would only go on to show that if any of the last dates of the election programme fall on public holiday including Sunday, the last date shall be extended to the next succeeding working day. Thus, as per Clause (iv), the date of withdrawal of nominations was already fixed for 13.12.2019 and under Clause (v), the list of contestants was to be announced on the next day after the last day of withdrawal of nomination papers. The respondent-Election Commissioner has, thus, acted only on the ministerial aspect of declaring the result of unopposed candidates and to forward the list of the 50 final contestants. The fact remains that the President had been duly elected on account of withdrawal of all nomination by other candidates.

Counsel for the petitioners has also argued that as many as 6 persons had filed the withdrawal at the initial stage which would be clear from Annexure P-3 dated 06.12.2019. Apparently all other candidates withdrew from the post of President leaving petitioner No.1 to be declared elected unopposed. The Election Commissioner was, thus, under a bounden duty to follow the Election Schedule which he had set forth and to which no party had objected to at any point of time earlier. Therefore they now, cannot turn around and say that it fell on a Saturday which was not a working day and the list of candidates had been wrongly

notified on 14.12.2019. The provisions of the Act also go on to show that Section 10 is regarding cancellation of the registration of the Trade Union and has nothing to do with the elections of the Trade Union which was held and which was the subject matter of dispute and wrongly entered into by respondent No.3, without jurisdiction. Section 10 reads as under:

10. Cancellation of registration.- A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar--

(a) on the application of the Trade Union to be verified in such manner as may be prescribed, or

(b) if the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or that the Trade Union has ceased to exist or has wilfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision, or has rescinded any rule providing for any matter provision for which is required by section 6;

(c) if the Registrar is satisfied that a registered Trade Union of workmen ceases to have the requisite number of members:]

Provided that not less than two months' previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate shall be given by the Registrar to the Trade Union before the certificate is withdrawn or cancelled otherwise than on the application of the Trade Union.”

It is settled principle that a authority gets some strength from an Statute, as such, to pass an order, which in the present case, could not be demonstrated by counsel for the U.T. Administration or by the private-respondent No.4. The Authority is a creation of the statute and has powers delineated under the Act. It cannot assume or usurp any powers

beyond what has been given to it under the Statute which in the present case, has not apparently been made out and on account of the lack of jurisdiction the actions can be necessarily struck down.

The issue is no longer res-integra on the powers of respondent No.3 and its lack of authority to adjudicate on a election matter. A Division Bench of the Patna High Court in **Bokaro Steel Workers Union and another Vs. State of Bihar and others 1995 (1) LLN 1079** examined the issue whether the Registrar has any authority to issue any direction in a dispute between two rival factions claiming to be the office bearers of a Union. It was noticed that a Civil Suit, as such, was pending inter se the parties and the action of the Labour Commissioner, Bihar, who got the matter enquired into that the elections should be held under the supervision of the Deputy Labour Commissioner was bad. It had been noticed that the elections between the rival factions founded by their respected claims was not in accordance with the Union's Constitution and the Registrar, Trade Union had directed that the election be held at the National Headquarters of INTUC. Accordingly, the question which came up for consideration before the Division Bench was that whether there was any provision under the Trade Union Act, 1926 to issue directions by the Commissioner. While referring to Section 28 and the earlier precedents on the issue directions were issued that it was without any authority and jurisdiction and unsustainable under the eyes of law.

The said view was followed by another Division of the Patna High Court in **Singh R.N. & another Vs. State of Bihar & others 1998**

(2) LLJ 330, wherein also, the Joint Labour Commissioner had referred the internal disputes of the Union for adjudication by the Independent Board. He had also called for the list of members from the rival Unions and directed to hold the elections under the supervision of the Registrar, Trade Unions. The argument that the disputes of the Unions which are non statutory bodies could not be supervised by Registrar and the respondent had no authority to refer such disputes to the Independent Board under the Act since there was no provision for adjudication of such disputes was raised. It was held that there was no provision of law which had been brought to the notice of the Court that the internal disputes could be adjudicated by the Joint Labour Commissioner. Relevant portion of the judgment reads as under:

“5. The submission urged on behalf of the petitioners appears to be sound in law. There is no statute or rule which provides a forum for the adjudication of internal disputes of Trade Unions, nor is there any law which provides a forum for adjudication of disputes relating to election of office bearers. Under [Section 8](#) of the Trade Union Act, 1926 the Registrar is required to register the Trade Union by entering in a register to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration. In Form B the name of office bearers has to be entered. Where there is dispute as to who are elected office bearers of a particular Union, it has been consistently held by this Court and by other High Courts as well that it is not within the jurisdiction of the Registrar of Trade Unions to determine which of the rival groups of office bearers is the real one. This is because under the [Trade Unions Act](#), 1926 there is no provision for adjudication of such disputes by any designated

officer or authority. Obviously, therefore, when such disputes arise, they have to be resolved only by filing a civil suit in a Court of competent jurisdiction. No provision of law or rule has been brought to our notice which authorises the Joint Labour Commissioner to refer for adjudication the internal disputes of law which provides for holding of election under the supervision of Registrar, Trade Unions. Counsel for the petitioners is, therefore, right in submitting that there is no legal authority for issuance of impugned orders (Annexures 12 and 13) under which the internal disputes were referred for adjudication by the Independent Board, and upon its recommendation election is directed to be held under the supervision of Registrar, Trade Unions. A similar view has been taken by a Division Bench of this Court in C.W.J.C. No.3516 of 1981 decided on March 12, 1982. We are in respectful agreement with the principles laid down in the aforesaid judgment.”

The said view was followed in **Tata Workers Union Vs. State of Jharkhand & another 2002 (4) SCT 82**. In the said case, the Registrar of the Trade Union had passed an order whereby he was to supervise the Union's election. It was, accordingly, held that he could not intervene in holding of the elections. Relevant para of the judgment reads as under:

“7. The law in this regard is therefore well settled that the Registrar cannot intervene in the matter of holding election of the office bearers of the registered Trade Union. Even assuming that the Registrar has got the power, it appears from the facts and the evidence produced in the instant case that the parties are unnecessary trying to involve the Registrar Trade Union by making complaint, as a result of which holding of election has been postponed.”

The Calcutta High Court in **Falguni Chakraborti Vs. The**

State of West Bengal 2002 LIC 65 declined to entertain the writ petition wherein directions were sought in the nature of mandamus to consider the representations of the petitioner. It was, accordingly, noticed that election had already been held of the Union under the directions of the Court and the power under Section 28(4) of the Act was an administrative power. The claim of having been elected and that the election had not been held, did not fall within the provisions of sub-section (4) and once the matter was pending before the Civil Court, the petitioner was at liberty to approach the same. Relevant portions of the judgment read as under:

“10. Sub-section (4) empowers the Registrar or its authorised officer to examine the documents referred to in sub-sections (1), (2) & (3). It is an administrative power. We may now examine the same in the context of this case which relates to sub-section (2). In the present case the changes of the office bearers which is being disputed by the petitioners. Now in order to ascertain that there has been changes the Registrar may examine the same. This is required only when the Registrar may have reason to form an opinion that it is necessary. But it is only to ascertain that the statements submitted are supported by documents. Section 28 relates to 'Returns' by the Trade Unions. Therefore sub-section (4) has to be construed in the context of Section 28. It cannot travel beyond the scheme of section 28. Every provision of the statute has to be interpreted having regard to context and the scheme of the provisions in respect whereof the particular section etc. is provided for. As observed earlier section 28 relates to submission of returns only. Section 28 does not postulate adjudication of dispute. Sub-section (4) does not empower the registrar to adjudicate any dispute. Adjudication of a dispute is not a administrative function. It is a quasi-

judicial function. Unless statute specifically provides no statutory authority can exercise any quasi-judicial function. Such functions are to be conferred by statute specifically. An Authority created under a statute is a creature of statute. His powers are to be found out from within the statute itself. He cannot assume any extra-statutory power.

11. Section 28 is only a regulatory procedure. It is not a substantive power that has been conferred on the registrar. In order to perform or discharge the regulatory; function he can examine documents. How such documents can be examined has been mentioned. But nothing from sub-section 4 indicates that it has conferred any power of adjudication of any dispute particularly election dispute. The correctness of the election or otherwise if disputed: One claiming to have been elected and other claiming that such election has not been duly held, is a determining of specific dispute which has never been contemplated by the legislature while incorporating Sub-section 4.”

Reliance by Mr.Patwalia upon the judgment of the Apex Court in **S.P Chengalvaraya Naidu** (supra) is without any basis since that was a case wherein the plea taken was that the preliminary decree which was sought to be passed had been obtained by fraud. The same had been accepted by the High Court which had set aside the order of the Trial Court declining the prayer for final decree for partition. The said order was set aside by the Apex Court and it was accordingly held that Courts of law are meant for imparting justice between the parties. A person whose interest is based on falsehood, has no right to approach the Court as a person who is bound to produce the documents which are relevant for the litigation. If any document is withheld in order to gain advantage on the other side then he would be guilty of playing fraud on

the Court as well as on the opposite party and thus, the said order of the High Court was set aside. The said judgment would not come to the rescue of respondent No.4. Rather, on the facts recorded above, it would go on to show that the nomination of the candidates for the post of Presidentship had been withdrawn which were apparently accepted as per the Election Schedule drawn up by the Election Commissioner. Resultantly, petitioner No.1 had been declared elected.

The election process had, thus, been wrongly cancelled by respondent No.3 without any jurisdiction and the said orders are nonest in the eyes of law and are accordingly quashed along with all consequential proceedings including the process of appointment of a fresh Election Commissioner. Resultantly, the present writ petition is allowed and the decision to declare the petitioner elected to the post of President, is upheld. Respondent No.3 shall continue the election process, in pursuance to its earlier authority given by the Executive Committee of respondent No.4 and take steps to ensure that the election is completed at the earliest by drawing a fresh election schedule for the rest of the posts.

With the above-said directions, the present petition is allowed. Resultantly, all misc. applications filed are disposed off, having been rendered as infructuous.

30.09.2020

Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*