

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

APPELLATE SIDE

Before:

The Hon'ble Justice T.S. Sivagnanam

and

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 83 of 2019

(WPA 29480 of 2017)

IA No.: CAN 1 of 2019 (Old No. CAN 728 of 2019)

UCO Bank

vs.

All India UCO Bank Officers Federation & ors.

with

COT 26 of 2019

All India UCO Bank Officers Federation & ors.

Vs.

UCO Bank & ors.

Appearance:

For the appellant

**: Mr. Sabyasachi Choudhury, Adv.
Mr. Rajarshi Dutta , Adv.
Mr. Sourjya Roy, Adv.**

For the respondents

**: Mr. Joydeep Kar, learned Senior Advocate.
Mr. Soumya Mazumdar, Adv.
Mr. Subhrangsu Ganguly, Adv.**

Judgment reserved on

: 15.11.2022

Judgment Delivered on

: 23.12.2022

Hiranmay Bhattacharyya, J.:

1. This appeal is at the instance of UCO Bank and is directed against judgment and order dated December 17, 2018 passed by Learned Single Judge in WPA 29480 of 2017 whereby the Bank was directed to allow writ petitioner/respondent no. 2 or any duly elected as office-bearer of the Union but not serving in the Bank to participate in the negotiations.
2. All India UCO Bank Officers' Federation (for short "the Federation") and its General Secretary being the respondent nos. 1 and 2 in this appeal have preferred a cross-objection being COT 26 of 2019 and have prayed for striking down the impugned policy of the Bank dated November 3, 2017 and for quashing the letter dated 3rd November, 2017 and 24th November, 2017.
3. Facts giving rise to the instant appeal are summarized hereunder as follows:

The Federation herein claims to be a registered Trade Union of which the writ petitioner no. 2/respondent no. 2 is its General Secretary. The respondent no. 2 retired from service of the Bank with effect from December 1, 2003 but, in terms of the

Constitution of the Federation he is eligible to contest the election of the office-bearers of the Federation and to carry on its functions and discharge his duties for the post for which he was elected. The Bank in the meeting of the Board of Directors held on November 3, 2017 took a decision to allow only serving officers who are duly elected office-bearers of the Majority Officers' Association in the meetings/discussions/negotiations with the management of the Bank. Subsequently, Bank by a letter dated November 24, 2017 informed the Federation about the aforesaid policy decision. Since, the aforesaid decision of the Bank restricted the right of the retired officers who are also the office-bearers of the Majority Officers' Association to participate in the meetings/ discussions/ negotiations with the management of the Bank, the respondent nos. 1 and 2 herein filed WPA 29480 of 2017 seeking a writ of mandamus commanding the Bank to set aside and quash the resolution dated November 3, 2017 and the letters dated November 3rd, 2017 and November 24th, 2017.

4. Mr. Choudhury, learned Senior Counsel representing the Bank contended that a Trade Union neither has a common law

right nor a statutory right to negotiate. He further submitted that since the Bank has given the right of negotiation in terms of its industrial policy, the same cannot be made the subject matter of a judicial review under Article 226 of the Constitution of India. He further submits that the Trade Unions Act, 1926 (for short “1926 Act”) deals with the formation and function of a Trade Union and regulates internal affairs by such registration. The said Act does not confer any power of negotiation or bargaining with third parties in any manner. He further contended that the 1926 Act does not provide that a member of a Trade Union shall have a right to negotiate with the management or that the management would be under an obligation to negotiate with an office bearer of the union. He further contended that a retired employee cannot claim a right to negotiate with the management even if he happens to be the office bearer of the union. In support of such submission, Mr. Choudhury places reliance upon a decision of the Hon’ble Supreme Court of India in the case of ***State Bank of India Staff Association vs. State Bank of India*** reported in (1996) 4 SCC 378. He also

referred to a decision of a learned Single Judge of this Court in the case of ***UCO Bank Employees' Association and Anr. vs. UCO Bank and Anr. reported at (2014) SCC Online Cal 5074.***

5. By placing reliance upon a decision of the High Court at Rajasthan, Jodhpur in the case of ***All India SBBJ Employees' Coordination Committee vs. Union of India & Ors reported at 2015 SCC OnLine Raj 11826***, Mr. Choudhury learned Senior Counsel, argued that amendment to Section 22 of the 1926 Act does not confer any right on the retired employee, office bearer of the Union to participate in the negotiations with the management. He further contended that concept of collective bargaining emanates from the Industrial Disputes Act, 1947 (for short "the 1947 Act") and since there is no corresponding amendment, in the said Act, a retired employee office bearer cannot claim any right to participate in the negotiations with management. He further submits that the aforesaid decision of the Single Bench of "Rajasthan High Court was affirmed by the Division Bench in D.B. Civil Special Appeal (Writ no. 1057/2015) delivered on

18.11.2015. He, thus, submitted that the impugned order be set aside and the writ petition be dismissed.

- 6.** Mr. Kar, learned Senior Counsel assisted by Mr. Majumder, learned Counsel submitted that the right to form Trade Union is a fundamental right under Article 19(1) (c) of the Constitution of India. By referring to the definition of “Trade Union” in Section 2(g) of the 1926 Act, Mr. Kar contended that negotiation has been recognized as the right of the Trade Union through such statute. He further submitted that once a Trade Union is registered in accordance with the 1926 Act, management of the Bank cannot put any fetter on the right of the Trade Union and its members to participate in negotiations with the management. He further submitted that the impugned policy of the Bank interferes with the Constitution of the Trade Union by way of unreasonable encroachment on the democratic and fundamental rights of members of the Trade Union to elect their office-bearers. He submitted that Section 22 (2) of the 1926 Act, provides for the proportion of existing employees to be the office-bearers. According to Mr. Kar, if the provisions of the 1926 Act, with

regard to electing the office-bearers is complied with, the management of the Bank cannot impose upon the Trade Union a condition for negotiations which will have the effect of forcing the members to elect only serving employees as office-bearers. By referring to a decision of the Hon'ble Supreme Court in the case of **(2004) 1 SCC 142 in the case of Bokajar Cement Corporation Employees' Union vs. Cement Corporation of India limited**, Mr. Kar submitted the Hon'ble Supreme Court in that decision explained the case of **State Bank of India Staff Association vs. State Bank of India reported at 1996 (4) SCC 378**. Mr. Kar further referred to a decision of the Hon'ble Madras High Court in the case of **L. Balasubhramaniam & Anr. vs. Indian Overseas Bank & Ors. (Writ Appeal No. 2137 of 2013 dated 09.01.2014)** and contended that honorary members acting as office-bearers of the union even after their superannuation can represent the majority union and are entitled to participate in the negotiations and discussion with the management of the Bank pertaining to employer-employee relationship. Mr. Kar thus,

concluded by submitting that the impugned policy of the Bank should be struck down and the Cross-Objection be allowed.

7. Heard the learned Advocates for the parties and perused the materials placed.

8. Human Resource Management Department of the UCO Bank framed the management relationship policy for the officers which was approved by the Board of Directors in its meeting held on 26.02.2013. The said policy provides for negotiations. Clause 2.2 of such policy states that negotiations would mean decision on policy matters at the Apex level only with registered and recognized Officers' Association having majority. It was also provided therein that negotiation status on policy matters are to be accorded only to the All India Majority Organization of Officers at the Apex level. The policy further provides that in negotiations on policy matters, the association shall be represented from office-bearers from Association of Officers namely President, General Secretary and other Office-bearers subject to the maximum of five. However, in the Grievance Redressal Meeting at the Apex level, the Association shall be represented by office-bearers from

Association of Officers namely President, General Secretary and other Office-bearers subject to the maximum of three.

9. The Bank thereafter reviewed the practice of allowing retired officers who are duly elected office-bearers of the Majority Officers' Association in various meetings/ discussions/ negotiations with management of the Bank and a proposal modifying the earlier guidelines was placed before the Board of Directors in its meeting held on 3rd November, 2017 to allow only serving officers who are duly elected office-bearers of the Majority Officers' Association in meetings/ discussions/ negotiations. Such proposal was duly approved by the Board of Directors. The authorities of the UCO Bank by a letter dated 3rd November, 2017 informed the respondent no. 1 Federation that henceforth only serving officers who are duly elected office-bearers of the Federation shall be allowed to participate in various meetings/ discussions/ negotiations with management of the Bank. The authorities of the UCO Bank by a subsequent letter dated November 24th, 2017 informed the Federation that such decision was taken by

taking into consideration the fact that the association shall be best represented by serving officers only.

10. This decision of the management of the Bank to allow only serving officers who are duly elected office-bearers of the majority officer association to participate in the meetings/discussions/negotiations with the management have given rise to the writ petition from which the instant appeal arises.

11. It is no doubt true that the negotiation status on policy matters was accorded by the Bank to All India Majority Organization of Officers at the Apex level. The bone of contention in this appeal is whether the management of the Bank as a part of their policy decision can curtail the right of the members of the association by imposing a restriction thereby denying the right of the office-bearers who are not serving employees to attend in the negotiations with the management of Bank.}

12. Therefore, the issue that falls for consideration in this appeal is whether office-bearers of the Federation upon his retirement from service can be debarred by the management to

participate in the negotiations with the management of the Bank.

13. All citizens have the right to form associations or unions as guaranteed under Article 19(1) (c) of the Constitution of India. The 1926 Act was enacted to provide for the registration of Trade Unions and in certain respects to define the law relating to registered Trade Unions.

14. Clause (a) of Section 2 of the said Act defines “executive” to mean the body to which the management of the affairs of a Trade Union is entrusted;

Clause (b) of Section 2 defines the term “office-bearer” in the case of a Trade Union to include any member of the executive thereof but does not include any auditor;

Section 2(a) read with Section 2 (b) of the 1926 Act implies that the management of the affairs of a Trade Union is entrusted upon its office-bearers.

15. Section 2(g) defines “Trade Dispute” to mean any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is

connected with the employment or non-employment or the terms of employment or the conditions of labour, on any person, and “workmen” means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.

Section 2(h) defines “Trade Union” to mean any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers or for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more Trade Unions.

Therefore, trade dispute is a dispute which is connected with the employment or non-employment or the terms of employment or the conditions of labour of any person.

- 16.** The object behind the formation of Trade Union as would be evident from Section 2(h) is for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers

or for imposing restrictive conditions on the conduct of any trade or business.

17. Section 6 of the said Act lays down the provisions to be contained in the rules of a Trade Union. Clause (e) thereof states about the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected and also the admission of the number of honorary or temporary members as the office-bearers as required under Section 22 to form the executive of the Trade Union. Therefore, Section 6 (e) provides for admission of ordinary members who are serving employees only as well as honorary and temporary members as office-bearers.

18. Section 22 of the said Act lays down the proportion of office-bearers to be connected with the industry. Sub-Section 2 of Section 22 reads as under:

“(2) Save as otherwise provided in sub-section (1), all office-bearers of a registered Trade Union, except not more than one-third of the total

number of the office-bearers or five, whichever is less, shall be persons actually engaged or employed in the establishment or industry with which the Trade Union is connected.

Explanation. –For the purposes of this subsection, an employee who has retired or has been retrenched shall not be construed as outsider for the purpose of holding an office in a Trade Union.”

Therefore, Section 22 (2) read with the explanation does not prohibit a retired employee from holding an office in a Trade Union provided the proportion of office-bearers as laid down in Section 22(2) is not violated.

Section 21A of the 1926 Act provides the grounds of disqualification of office-bearers of Trade Unions.

- 19.** The respondent no. 1 is registered under the 1926 Act. Rule 3 of the Constitution of Association of Officers of UCO Bank, West Bengal provides for two types of membership –

1. Ordinary and ;
2. Life.

Rules 4A, 4A(1) and 4 (B) of the Constitution provides for admission of ordinary & life members which are extracted herein:

“Rule 4.A: ORDINARY MEMBERSHIP

Any officer working in West Bengal & Sikkim, and officer on probation and officer posted in any branch/office in India of UCO Bank, who is not a member of any other Association/Organisation duly registered with the Registrar of Trade Unions under the Trade Unions Act and has attained the age of 18 (Eighteen) years, shall be eligible for admission as an Ordinary Member of the Association provided he/she abides by the rules/bye-laws and regulations of the Association that exist and/or may be made by the Association from time to time.

RULE – 4.A (1): After his/her retirement from Bank’s service, he/she will cease to be the ordinary member of the Association as a general rule. However, in case the

ordinary member happened to be an Office Bearer of the Association while he/she is retiring from Bank's service, in the interest of the organization, as a very special case, the Central Executive Committee, by virtue of power conferred by this Rule, may allow such Ordinary Member(s) to continue as Office-Bearer(s) of the Association in the same position as is/was held by him/her prior to his/her retirement from Bank's service till next Triennial Conference and he would continue to pay monthly subscription at the rate as applicable to an Ordinary Member and enjoy all rights and privileges of an Ordinary Member.

RULE – 4.B: LIFE MEMBERSHIP : In the interest of the organization, the Central Executive Committee, subject to ratification by the Delegate Conference, may suo moto offer admission to retiring officers having background of trade union and social activities as Life Members of the Association to be effective from the date of their retirement, provided however that the Association makes such offer to

them in writing and obtains their acceptance thereto at least 15(Fifteen) days before their date of superannuation. Such Life Members shall also agree to abide by rules/ bye laws/ regulations of the Association.

The Central Executive Committee, by virtue of power conferred by this Rule, may allow such Life Members to continue as Office-Bearer(s) of the Association in the same position as is/was held by them prior to their retirement from Bank's service till next Triennial Conference.

The Central Executive Committee, by virtue of power conferred by this Rules as well as the provision of Rule – 12, may nominate such life-members as Delegates to the Delegate Conference of the Association.

Such Life Members when nominated as Delegates to the Delegate Conference are eligible to elect and to be elected as Office-Bearers / Members of the Central Executive Committee of the Association.

The rights and benefits of a Life Member(s) shall be the same as that of an Ordinary Member of the Association.”

20. Thus, it is evident from the aforesaid Rules of the respondent no. 1 Federation that in case the ordinary member happens to be an office-bearer of the association, the Central Executive Committee may allow such ordinary member to continue as office-bearers of the Federation even after his retirement from service. Similarly, a life member may also be allowed to continue as office-bearers in the same position as is/was held by them prior to their retirement from Bank’s service till next Triennial Conference.

21. In a democratic set up, the members of an association have a right to elect from amongst them the office-bearers of the association upon whom management of the affairs of the Federation shall be entrusted. The members of the Federation are the best persons to decide as to who are competent to manage the affairs of the Federation.

22. Neither the 1926 Act nor the Constitution of the respondent no. 1 Federation prohibits a retired employee from continuing as well as performing the duties as an office-bearer of the respondent no. 1 Federation. The policy decision of the Bank is inconsistent with the provisions of the 1926 Act and this Court, therefore, holds the same to be an arbitrary one.

23. The management of the Bank sought to justify their decision of imposing restriction on the ground that only the serving officers shall represent the case of the serving officers in the best possible manner. The restriction imposed by the Bank management in the garb of policy decision, in the considered view of this Court, amounts to infringing upon the right of the members of the Federation to elect their office-bearers. The effect of the policy decision is that the members cannot elect retired persons as office bearers of the Federation though there is no such restriction either in the 1926 Act or the Constitution of the Federation. The selection and/or choice of the office-bearers falls within the exclusive domain of the members of the Federation and management cannot, in the garb of policy decision, infringe upon such right of the

members. The members of the association are the best persons to decide who shall represent them in the negotiations with the management of the Bank and such choice cannot be left to the sweet will of the management of the Bank. This Court is, therefore, of the considered view that office-bearers of the Federation who has since retired from service cannot be debarred by the Management of the Bank from participating in the negotiations with the management of the Bank.

24. The Hon'ble Single Judge after taking note of the undisputed factual position that the respondent no. 1 Federation is a registered Majority Organization of Officers and that the respondent no. 2 is a duly elected office-bearer as a life member of it, was right in holding that the Bank in formulating its policy decision is in effect refusing or has refused to negotiate.

25. The Madras High Court in the case of **L. Balasubhramaniam** (supra) after considering the provisions laid down in the explanation to Section 22(2) of the 1926 Act and taking note of the fact that the bye-laws of the Union do not prohibit office-bearers to continue in such post even after

their retirement held that the office-bearers of the Union even after their superannuation are entitled to participate in the negotiations and discussions with the management of the Bank pertaining to employer-employee relationship. The Madras High Court distinguished the judgment in the case of State Bank of India Staff Association (supra) by noting that the rules of the association do not permit any ordinary/honorary member to occupy or continue in any post in the Central Committee. The decision of the Madras High Court supports the view taken by this Court.

- 26.** The sheet anchor of the Bank is the decision of the Hon'ble Supreme Court in the case of ***State Bank of India Staff Association*** (supra). In the said reported decision, the Staff Federation followed a policy that none but a serving employee has to represent Federation or Circle Union / Association at all levels in bilateral forums. The appellant no. 2 in the said reported decision was elected as the General Secretary when he was an ordinary member, but after his retirement from service he was not elected as an honorary or a temporary member. On such factual background, the Hon'ble

Supreme Court held that the said appellant cannot legitimately claim his continuance as an ordinary Member and General Secretary of the Union after his retirement from service and, therefore, cannot claim a right to negotiate with the management as a representative of the Union.

27. The aforesaid decision was subsequently explained by the Hon'ble Supreme Court of India in ***Cement Corporation of India*** (supra) by observing that in the absence of any provision in the constitution of the Trade Union for automatic cessation of membership as a result of cessation of employment, it cannot be said held that an employee would cease to be a member of the Trade Union upon his retirement.

28. In ***Chairman, SBI and another vs. All Orissa State Bank Officers' Association and others reported at (2003) 11 SCC 607***, the issue that fell for consideration was whether a non-recognized association has a right to espouse the case of officers of the Bank with the management of the Bank or such right was vested only upon the recognized association. The Hon'ble Supreme Court in its judgment delivered on 06.05.2002 reported at ***(2002) 5 SCC 669*** held that the

management cannot outrightly refuse to have any discussion with a non-recognized union in matters relating to service conditions of individual members and other matters incidental thereto. However on a review petition filed against the judgment dated 06.05.2002, the Hon'ble Supreme Court in **(2003) 11 SCC 607** allowed the review petition thereby recalling the judgment dated 06.05.2002. The Hon'ble Supreme Court after taking note of the grievance procedure circulars held that the right of representation was not given to the majority union also and, therefore, there was no discrimination. The said decision is distinguishable on facts and, therefore, is not applicable to the case on hand.

29. In ***UCO Bank Employees' Association & Anr. vs. UCO Bank & Anr. reported at 2014 SCC OnLine Cal 5074***, the decision of the Bank to negotiate at the apex level on policy matter with the majority union was challenged on the ground that the same is unreasonable and against the spirit of the Sastri Award. It was further contended that the object of collective bargaining would be frustrated if the other unions are left out of the discussion. The said decision of the learned

Single Judge of this Court is distinguishable on facts and therefore, is of no assistance to the Bank.

30. In the case of ***All India SBBJ Employees' Coordination Committee vs. Union of India & Ors reported at 2015 SCC OnLine Rajasthan 11826***, the union issued the notice of strike and nominated the elected representatives for discussions/ negotiations who were only serving employees of the Bank and pursuant to the said notice of strike, the management of the Bank invited such representatives to participate in the discussions/negotiations before initiation of strike. The learned Single Bench of the Rajasthan High Court by its Order dated November 8, 2015 dismissed the writ petition filed by the union. On an appeal being preferred therefrom, the Division Bench of that Court in DB Civil Special Appeal (Writ) number 1057 of 2015 passed a judgment on 18.11.2015. The Hon'ble Division Bench after taking note of the provisions laid down in Section 3 read with Section 36 of the Industrial Disputes Act, 1947 and considering the purpose

for such negotiations held that the provisions of the Industrial Disputes Act and not the Trade Unions Act will prevail.

31. The decision of the Rajasthan High Court is based on the provisions laid down under the Industrial Disputes Act, 1947. Section 3(1) of the said Act lays down the manner in which the Works Committee in an industrial establishment is to be established. It further provides that the representative of the workmen shall be chosen in the prescribed manner from amongst the workmen engaged in the establishment in consultation with their Trade Union, if any, registered under the 1926 Act.

32. Section 36 of the 1947 Act provides for representation of the parties. Sub-Section (1) thereof provides how a workman who is a party to the dispute shall be entitled to be represented in any proceeding under the 1947 Act. Sub-Section 2 thereof provides how an employer who is party to a dispute shall be entitled to be represented in a proceeding under the 1947 Act.

The issue arising in the Rajasthan decision was with regard to a notice for strike under the provisions of the 1947 Act.

33. In the case on hand the issue is how an association of officers will be represented in the meetings/ discussions/ negotiations with the management of the Bank. The issue involved in the Rajasthan decision is completely different from the case on hand and therefore, the same do not have any manner of application to the case on hand.

34. The Hon'ble Single Judge in the judgment and order impugned herein held that in the event the Bank is required to have meetings/ discussions/ negotiations henceforth with the respondent no. 1 Federation, it must allow the respondent no. 2 or any duly elected not serving in the Bank office-bearer of the Union to participate in such negotiations/ meetings/ discussions. However, the Hon'ble Single Judge did not allow the prayer of the writ petitioners/respondent no. 1 and 2 herein for quashing the impugned resolution dated November 3rd, 2017 and the letters dated November 3rd, 2017 and

November 24th, 2017 for which they have taken out the Cross-Objection being COT no. 26 of 2019.

35. For all the reasons as aforesaid, this Court holds that the management of the Bank had no authority and/or jurisdiction to impose a restriction in the matter of representation by the office-bearers of the Federation to the effect that only serving officers who are duly elected office-bearers of the Majority Officers' Association shall participate. Such restriction, in the considered view of this Court, is an arbitrary exercise of power by the management of the Bank and, therefore, the policy decision and all consequential action taken pursuant thereto are liable to be set aside and quashed.

Such policy decision of the Bank infringes upon the right of the members of the Federation to elect the office-bearers according to their choice. Therefore, this Court is unable to accept the contention of Mr. Choudhury that the writ petition was not maintainable.

36. Accordingly, the decision taken in the meeting of the Board of Directors held on 3rd November, 2017 to allow only

serving officers who are duly elected office-bearers of the Majority Officers' Association in meetings/ discussions/ negotiations are hereby set aside and cancelled. All consequential steps taken pursuant thereto including the letters dated 3rd November, 2017 and 24th November, 2017 are also set aside and quashed.

The Cross-Objection being COT no. 26 of 2019 stands allowed. The Appeal being MAT 23 of 2019 stands dismissed without any order as to cost. Connected applications, if any, also stand disposed of accordingly.

Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, J.) (Hiranmay Bhattacharyya, J.)

(P.A. Saurav)