

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2011

CORAM

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.No.8609 of 2011,
M.P.Nos.2 and 3 of 2011 and
Contempt Petition No.1386 of 2009

The Tamilnadu State Apex Co-operative
Bank Employees Union
(Reg.No.2484)
No.233, NSC Bose Road,
Chennai - 01,
Rep. By its General Secretary

... Petitioner in
Writ petition and
Cont.P.

Vs.

1.The Registrar of Trade Unions/
The Deputy Commissioner of Labour I,
D.M.S.Complex, Teynampet, Chennai - 06.

2.The Commissioner of Labour,
D.M.S.Complex, Teynampet,
Chennai - 06.

3.The Tamilnadu State Apex
Co-operative Bank Staff Union,
V.V.Kovil Street,
Vannia Teynampet,
Chennai -86.

Rep. By its General Secretary

...Respondents in
writ petition

1.Mr.P.Kannapiran,
General Secretary,
Tamilnadu State Apex Cooperative
Bank Staff Union, V.V.Koil Street,
Vannia Teynampet, Chennai -86.

2.Mr.K.Vijayalayan,
General Secretary,
Tamilnadu State Apex Cooperative
Bank Staff Union, V.V.Koil Street,
Vannia Teynampet, Chennai -86.

.. Respondents in
contempt petition

Writ Petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of Certiorarified mandamus, calling for the records of the 1st respondent relating to his proceedings in A3/3450/2011 and quash the order dt.10.3.2001 and consequently direct the 1st respondent to set aside the Certificate of Registration issued by the 1st respondent in No.3184/CNI.

Contempt Petition is preferred under Section 11 of the Contempt of Courts Act to punish the respondents for their willful and deliberate disobedience of the order dated 08.05.2007 and 17.09.2007 in M.P.No.2 of 2007 in W.P.No.17005 of 2007.

For Petitioner : Mr.R.Yashod Vardhan, Sr.Counsel
for Mr.R.Sivakumar

For Respondents : Mr.V.Manohar for R1 in
Cont.Petition and for
R3 in WP

Mr.R.Ravichandran, AGP
for R1 and R2 in WP

C O M M O N O R D E R

The petitioner is the Tamil Nadu State Apex Cooperative Bank Employees Union. It claims to be the major Trade Union in the TNSC Bank and it is a registered as well as recognized union. The petitioner Union has come forward to file the present writ petition, challenging an order of the first respondent, viz.,Registrar of Trade Union-cum-The Deputy Commissioner of Labour -I dated 10.03.2011 and seeks to set aside the same and for a consequential direction to the first respondent to cancel the Certificate of Registration issued by him.

2. By the impugned order dated 10.03.2011, the first respondent informed the petitioner Union that the third respondent Union has been registered in accordance with the Trade Unions Act, 1926 and not on the basis of the wrong information furnished by them and therefore, there was no case for cancelling the registration.

3. Aggrieved by the said order, the writ petition came to be filed. The writ petition was admitted on 06.04.2011. Pending the writ petition, this Court ordered notice in the application for interim stay.

4. The petitioner Union also filed a Contempt Petition being C.P.No.1386 of 2009 for having disobeyed the order passed by this Court in M.P.No.2 of 2007 dated 17.09.2007 in W.P.No.17005 of 2007. In that order, this Court held that till a final decision arrived at in the main writ petition, the interim stay granted in the writ petition should continue. That writ petition was also

filed by the same Union, challenging an order dated 09.04.2007 regarding the grant of registration to the third respondent Union and to set aside the same.

5. It is only when the contempt petition came up before this Court, it was informed that subsequent to the filing of the contempt petition, by an order dated 10.03.2011, the Commissioner had negatived the case of the petitioner and that they have challenged the said order in the above writ petition. Hence, both the matters were directed to be listed together.

6. Heard the arguments of Mr.R.Yashod Vardhan, learned Senior Counsel appearing for Mr.R.Sivakumar, counsel for the petitioner and Mr.R.Ravichandran, learned Additional Government Pleader appearing for respondents 1 and 2 and Mr.V.Manohar, learned counsel appearing for the third respondent.

7. It is seen from the records that the third respondent Union applied for registration of their Trade Union under the name and style of Tamil Nadu State Apex Co-operative Bank Staff Union. The said application was considered by the first respondent, who is the Registrar of Trade Union. On perusal of the records, he found that the third respondent did not have the requisite minimum membership required in terms of Section 4(1) r/w Section 9A of the Trade Union Act. Therefore, in terms of Section 10B of the Act, their application was rejected by an order dated 16.02.2005. Aggrieved by the said order, the third respondent filed a writ petition before this Court, being W.P.No.7898 of 2005, challenging the said order. In that writ petition, the present petitioner Union got itself impleaded as 4th respondent. That writ petition was disposed of on 28.02.2007. This Court in paragraphs 2 and 3 held as follows:-

"2. It is represented by the learned counsel for the petitioner that in the impugned order itself it is stated that if the petitioner is able to establish that the Union is having minimum required members for registration, it can apply afresh and the same will be considered. The learned counsel for the petitioner further submits that as on today, the Union satisfied minimum staff strength for recognition and therefore, requested this Court to grant permission to apply for registration.

3. Hence, liberty is given to the petitioner to apply for registration of the Union before the second respondent/Deputy Commissioner of Labour, satisfying the requirements and on such representation being made, it is open to the second respondent to pass orders in accordance with law."

8. After the disposal of the said writ petition, the petitioner Union sent a representation dated 04.04.2007 stating that the third respondent pursuant to the order passed by this Court did not make any independent application and they do not have the minimum membership even for registering the trade Union. They also sent several letters to the first respondent dated 09.04.2007 and 25.04.2007. They also gave a list of their members. On the contrary, the third respondent claims that their Union has been registered with Registration No.3184/Chennai. On coming to know that the third respondent's Union had been registered, the petitioner Union filed a writ petition, being W.P.No.17005 of 2007, seeking for a direction to the first respondent to revoke the registration certificate. It was claimed that the third respondent do not have 10% minimum membership required under law and the Certificate granted to them was obtained fraudulently.

9. The third respondent has filed a counter affidavit dated Nil (July 2007). Though this Court granted an interim order which gave rise to the contempt petition, the said writ petition came to be disposed of by a final order dated 25.01.2011. The Court in paragraph 8 held as follows:-

"8. I am of the view that Section 10 of the Act contemplates a jurisdiction on the part of the Registrar to cancel the certificate of registration, when it comes to his knowledge that a fraud has been played or mistake has crept in issuing certificate of registration and taking note of the fact that as per the earlier order of this Court dated 28.02.2007, the petitioner -Union has been making repeated representations to the fact that 90% of the total strength of the employees of the bank are the members of the petitioner - Union, to put an end to this dispute, the first respondent should be directed to conduct proper enquiry after giving opportunity to both the petitioner as well as the third respondent and pass appropriate orders regarding the correctness or otherwise of the certificate issued to the third respondent under the impugned certificate. Accordingly, without setting aside the impugned certificate issued by the first respondent, I permit the petitioner to make proper representation as required under Section 10 of the Act for the purpose of cancellation of certificate of registration and if such representation is made by the petitioner - Union within ten days from the date of receipt of a copy of this order, the first respondent - Registrar shall consider after giving opportunity to both the petitioner as well as the third respondent and pass appropriate orders on merits and in accordance with law, within a period of four weeks thereafter. Since there has been an order of stay pending the writ petition, the status prevailing as on date shall be continued in

operation till the Registrar passes the order as stated above."

(Emphasis added)

10. After the said order was passed, the petitioner Union sent a representation dated 10.02.2011. In the representation, it was pointed out that the third respondent had included retired persons, promoted persons, members of the TNSC Bank Dr.Ambedkar Employees' Union and also the members of the petitioner Union and that cannot be permitted. It was also stated that when they do not have the minimum membership, the question of their having the registration of their Trade Union will not arise. The first respondent by a communication dated 18.02.2011 directed both parties to appear for an enquiry and thereafter passed the impugned order dated 10.03.2011. In the impugned order, it was stated by him that while registering a Trade Union, the authority will have to act in terms of Section 4 of the Act and with reference to the inclusion of the names of the members of Dr.Ambedkar Union, it was stated that the third respondent Union had informed the authority that they had not violated any Rules. It was further stated that there was no provision under the Trade Unions Act for determining the majority of each Union and if they want to prove their majority, they can apply to the State Evaluation and Implementation Committee in terms of the Code of Discipline. Therefore, there was no case made out to revoke the certificate granted in favour of the third respondent and hence, the request of the petitioner Union was rejected.

11. Attacking the said order, Mr.R.Yashod Vardhan, learned Senior Counsel stated that the first respondent did not even take note of the findings rendered by the Deputy Commissioner of Labour dated 16.02.2005. Once that findings stares at the face of the first respondent, the subsequent officer who occupies the seat cannot take a different stand and this was also not considered. He further submitted that when a writ petition was filed challenging the said order, this Court in W.P.No.7898 of 2005 recorded the submission of the counsel for the third respondent. Even as per the impugned order, if the third respondent was able to show that they were having minimum required members for registration, they can apply afresh and it will be considered and as on the date of the order passed by the Court, they had the minimum staff strength and requested this Court to grant permission to apply for registration. Therefore, on the date when the order came to be passed viz., on 28.02.2007, they did not have the requisite strength and the order passed by the first respondent predecessor were not disturbed. By the said order, liberty was given to the third respondent to apply afresh.

12. It is not clear as to when the third respondent had applied afresh. On the contrary, in April 2007 itself, the third respondent Union has been registered on the basis of their original application and no fresh application was made and this was a fraud upon the office of the first respondent. It is only when this fact was brought to the notice of this Court, this Court by an order

dated 25.01.2011 directed an enquiry to be conducted after opportunity to the parties. The first respondent failed to take note of the earlier proceedings dated 16.02.2005 and the consequential order passed by this Court dated 28.02.2007 and there is no reference to both the orders in the impugned order. On this short ground, the impugned order is liable to be interfered with.

13. Per contra, Mr.V.Manohar, learned counsel for the third respondent referred to his counter affidavit dated 19.04.2011 and contended that the order do not suffer from any infirmity. This Court only granted the third respondent an opportunity to move the authorities and the registration granted in favour of the third respondent Union was retained without being disturbed. Hence, the order do not call for any interference.

14. However considering the fact that when the third respondent earlier moved this Court, they have agreed to apply afresh and gave up the challenge made to the earlier order passed by the first respondent. The said fact was not even referred to by the first respondent. However, the first respondent did not record a finding as to whether the third respondent applied afresh pursuant to the order passed by this Court dated 16.0.2005 or their original application itself was considered as a valid application. In essence all along the petitioner Union was contending that there was a fraud committed by the third respondent and when an order was passed by this Court to consider the representation, it is this fact which ought to have been considered by him. When an authority who is empowered to decide the rights of parties either ignores or refuses to take note of the relevant considerations, then any resultant order suffers from non-application of mind. Therefore, this Court is obliged to interfere with the order passed by the first respondent dated 10.03.2011 made in Ref.No.A3/3450/2011 and the matter is restored on the file of the first respondent.

15. The first respondent is directed to take note of all the previous orders and the proceedings and after hearing the contention of both sides shall pass fresh orders in accordance with law and communicate the result to the petitioner as well as to the third respondent. But since this Court in the earlier order dated 25.01.2011 did not set aside the registration, status quo as on date will continue until an order is passed by the first respondent. This exercise shall be undertaken and a final order shall be passed within a period of three months from the date of receipt of a copy of this order.

16. The writ petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

17. In so far as contempt petition in C.P.No.1386 of 2009 is concerned, since it arose out of an interim order and the main

writ petition itself was disposed of on 25.01.2011, it is not a fit case where any contempt can be pursued. Moreover, this Court has allowed the present writ petition and directed fresh disposal by the first respondent. Hence, the contempt petition stands dismissed.

Sd/
Asst.Registrar

//True Copy//

Sub.Asst.Registrar

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To

- 1.The Registrar of Trade Unions/
The Deputy Commissioner of Labour I,
D.M.S.Complex, Teynampet, Chennai - 06.
 - 2.The Commissioner of Labour,
D.M.S.Complex, Teynampet,
Chennai - 06.
 - 3.The General Secretary
The Tamilnadu State Apex Co-operative Bank Staff Union, V.V.Kovil
Street, Vannia Teynampet, Chennai -86.
- 1 cc to Mr.V.Manohar , Advocate, Sr.No.38413]
1 cc to Mr. R.Siva Kumar, Advocate, Sr.No.38208

W.P.No.8609 of 2011 and
Contempt Petition No.1386 of 2009

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