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**(2008) 01 MP CK 0098**  
**In the Madhya Pradesh High Court**

R.K. Kathal

APPELLANT

Vs

Registrar, Trade Union and Others

RESPONDENT

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**Date of Decision :** 21-01-2008

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 151  
Constitution of India, 1950 — Article 226, 227  
Trade Unions Act, 1926 — Section 10, 2, 21, 22, 23

**Citation :** (2008) ILR (MP) 656 : (2008) 3 LLJ 642 : (2008) 5 MPHT 28 : (2008) 3 MPLJ 30

**Hon'ble Judges :** R.K. Gupta, J; Dipak Misra, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

Dipak Misra, J.

The substantiality and sustainability of the order dated 13-11-2007 passed by the learned Single Judge in Writ Petition No. 6124/2007 is in question in this intra-Court appeal preferred u/s 2 of the M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005.

The essential facts which are imperative to be adumbrated are that the petitioner-appellant invoked the extra-ordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India for issue of a writ of certiorari for quashment of the order dated 8-5-2007 passed by the Registrar, Trade Union, M.P., the first respondent herein. In the writ petition it was set forth that the workmen employed in the State Bank of India posted at various branches in the undivided State of Madhya Pradesh formed a trade union called SBI Workmen Union Bhopal Circle, Bhopal, which is registered under the provisions of the Trade Unions Act, 1926 (for short "the Act"). The Union is affiliated to the All India State Bank of India Staff Federation (for short "the Federation"), which is also a registered trade union and the apex union for the employees. The union has its constitution and bye-laws and as per the same, the main executive body has been vested

with the powers to govern and control the functions of the union. As per the constitution of the union, the Federation has the right and authority to adjudicate all disputes of the members affiliated to the union. The petitioner is a member of the union and, as pleaded by him, the last election was held in May, 2002 and the term of the office bearer expired in May, 2005. There was some dispute as regards the election, which led to filing of Writ Petition No. 2665/02 and an interim order was passed directing not to hold the election. Later on by the order dated 18-10-05, a direction was issued in the aforesaid writ petition to the authority empowered under the law to take necessary steps and hold the election in accordance with law. Despite the aforesaid directions, the respondent No. 2 did not hold the election for the post of General Secretary of the Union though he was obliged to do so. As the second respondent did not hold the election, out of 65 office bearers of the Central Committee, 52 office bearers convened a meeting to terminate the co-option of the said respondent as General Secretary under Clause 13.2.7 as he was not directly elected General Secretary. The meeting was held on the date fixed and on that day, a unanimous resolution was passed to terminate the co-option of the second respondent, and one Ramendra Nath Hore was co-opted as General Secretary. The option in that regard was sent to the Federation as per Annexure P-3 to the writ petition dated 26-12-06. Coming to know about the aforesaid situation, the second respondent created documents purported to the effect that the meeting of the working and Central Committee was allegedly held on 20th and 25th January, 2006. The notices of the aforesaid meeting were neither issued or circulated amongst the members. There was no quorum to hold the meeting. However, the respondent No. 2 declared the election, framed election rules and suspended four office bearers from primary membership and appointed the Registrar, Trade Unions as Chairman of the Central Election Committee. Various asseverations were put forth how illegalities were committed by the second respondent to aid and assist his associates to win the election. With the connivance and collusion with the Registrar, Trade Unions, the entire process of election was manipulated and all democratic norms were thrown to the wind. It was asserted that the respondent No. 2 suspended one Pankaj Saxena from the post of State Secretary (Chhattisgarh) on 20-12-06 and thereafter he was also suspended from primary membership on 25-12-06 though under Clause 11.6 of the Constitution, the Central Committee alone could suspend the primary membership of a member. As there was immense illegality in holding of election the Federation took cognizance of the dispute and called a meeting in Mumbai and it was resolved that they would abide by the decision of the Federation as regards the circle election. The said resolution dated 30-1-2007 has been brought on record as Annexure P-8 to the writ petition. Despite the aforesaid decision no action was taken by the respondent No. 2 to implement the same.

The Federation was intimated about the inaction and eventually the Federation issued a letter dated 5-2-2007 to the second respondent requiring him to confirm the compliance of the resolution dated 30-1-2007. The respondent No. 2

pretended to act as per the directions of the Federation on one hand and on the other hand managed the Registrar, Trade Unions that the decision could not be implemented inasmuch as the Bank had withdrawn all the infrastructure support and allowed the election to take place in the bank premises and hence, the election took place at a different place the information of which was not given to the majority of members which entailed in non-participation of the members in the election. In this manner, as set forth, the second respondent succeeded in continuing in the office despite the majority having not participated in the election. Because of this situation, the Federation advised majority of the members of Central Committee to take proper decision and accordingly, a decision was taken by the Central Committee on 4-3-2007 to hold fresh and fair election. A notification was issued on 21-3-2007 and the election was scheduled to be held on 12-5-07. At that juncture the second respondent submitted an application before the Registrar, Trade Unions contending that second election is impermissible. The Registrar, Trade Unions entertained the complaint put forth by the respondent No. 2 and issued notices fixing the date of hearing on 8-5-07 and on that day, without giving any opportunity passed an Order directing stay of holding of the election.

Questioning the legal propriety of the said order, it was contended before the learned Single Judge that the Registrar, Trade Unions had no power to pass any order relating to election of trade union. A reference was made to Section 28-J (M.P. Amendment) to highlight that the dispute may be raised and the same could be referred to Industrial Court in such manner as may be prescribed but the Registrar has no jurisdiction to pass the order of present nature.

On behalf of the respondent No. 2, it was contended in oppugnation that bye-laws and rules of the Union have been made applicable to the State of Madhya Pradesh w.e.f. 29-6-03. It was submitted that election was held in accordance with the said rules and 74 office bearers of the Central Committee of the Union were declared elected. The names of the elected office bearers were submitted to the Registrar for registering their names as lawful office bearers of the Union. The Registrar, Trade Union before registering their names issued notices to all concerned and heard the objections of certain members including the petitioner and passed the order dated 11-5-06 as contained in Annexure R-6 to the writ petition. It was also set forth that the Registrar, Trade Unions also held that the election held on 24-3-07 and result declared on 6-4-07 to be valid and lawful. It was also highlighted that the petitioner had lost the election to the post of Deputy General Secretary of the Union and as he lost the election, in order to form a parallel body under the same registration he issued certain notification illegally by giving them ante-date and issued election programme on 21 -3-07 in the name of unauthorised person, R.N. Bohidar, who is neither member of the union nor was he elected as member of the Central Committee. The petitioner also declared the election of the parallel body which compelled the respondent No. 2 to file an application before the Registrar, Trade Unions who on consideration of the facts and circumstances of the case passed the interim order.

The learned Single Judge addressed himself with regard to the rival contentions raised at the Bar and came to hold that if the petitioner has any grievance with regard to the conduct of the election or the result thereof, he could have filed appropriate proceedings before the Election Tribunal constituted under Clause 2.10 of the State Bank of India Workmen Union, Bhopal Circle but he chose not to do so; that the Registrar of Trade Unions had accepted the newly elected Trade Union after deciding the objections raised by the petitioner and registered the same under the provisions of the Act and issued a certificate of registration; that as the petitioner's objections were rejected by the Registrar, Trade Unions the remedy available to the petitioner was to assail the election by way of filing a dispute u/s 28-J of the Act (M.P. Amendment) before the Industrial Court but the petitioner did not avail the said remedy; that the petitioner himself had contested the election and lost it and had filed objections before the Registrar when the question of issue of certificate u/s 8 of the Act was taken up by the first respondent; that the aforesaid facts have not been mentioned in the writ petition and hence, there had been suppression of facts; that the non-applicants have not assailed the impugned order and the petitioner was not a party before the Registrar, Trade Unions and, therefore, he has no locus standi to assail the order in question; that the petitioner could have filed an application for intervention before the Registrar, Trade Unions and prayed for vacation of the order of stay; that the petitioner has not been able to demonstrate under what provisions of law the third respondent was authorised to issue notification of election which is the prerogative of the General Secretary of the Union; that the petitioner has not been able to demonstrate that the Secretary of the All India State Bank of India Staff Federation has any authority under the Constitution, bye-laws and election rules of the Union to issue the notification; that it is the choice of the Union to get itself affiliated with the Federation and it is not compulsory to be affiliated with the Federation inasmuch as the Union is an independent body; that the Federation has no authority to hold election of the Union as that is de hors the rules relating to the Union; and that even if the Registrar, Trade Unions has no jurisdiction to pass the order impugned justice has been done and hence, it does not warrant any interference in exercise of extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution of India inasmuch as if justice becomes the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.

We have heard Mr. A.K. Mishra, learned Senior Counsel with Mrs. D.K. Bohre for the petitioner, Mr. Samdarshi Tiwari, learned Govt. Advocate for the respondent No. 1 and Mr. S.K. Rao, learned Senior Counsel with Mr. Shailendra Pandey for the respondent No. 2.

Mr. Ajay Mishra, learned Senior Counsel appearing for the petitioner has raised the following contentions:

(a) The learned Single Judge has fallen into grave error by addressing himself to the merits of the case whereas the contention was advanced with regard to the

jurisdiction of the first respondent to pass an order of stay.

(b) The learned Single Judge has not appreciated the averments made in the petition and has fallaciously expressed the opinion that there has been suppression of facts.

(c) The fundamental difference between registration of a Trade Union and the dispute relating to status of office bearers have not been appositely appreciated by the learned Single Judge and that has led to the erroneous conclusion which warrants interference in the present appeal.

(d) The learned Single Judge has fallen into error by expressing the opinion that the petitioner has no locus standi to file the writ petition whereas there have been clear-cut assertions in the petition that he is grieved by the order of stay being a member of the union and when the order is totally without jurisdiction the same could have been challenged by him before this Court invoking the extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

(e) The learned Single Judge though has referred to Section 28-J, which is an amendment as far as the State of M.P. is concerned, yet has put the onus on the petitioner and not dealt with the issue of jurisdiction which is the centripodal issue to the controversy.

(f) The learned Single Judge has flawed by coming to hold that even assuming there is no jurisdiction in passing the order justice has been done by referring to certain citations which are inapplicable and further the matter related to the lack of inherent jurisdiction and there was interference in the matter of an election dispute this Court should not have expressed an opinion that justice has been done.

(g) The learned Single Judge has exceeded the jurisdiction by expressing the opinion that the Federation has no role and the Union is under no obligation to affiliate itself with the Federation inasmuch as neither the Union nor the Federation has been arrayed as a party to the writ petition.

Mr. Samdarshi Tiwari, learned Govt. Advocate appearing for the respondent No. 1 supported the order passed by the respondent No. 1.

Mr. S.K. Rao, learned Senior Counsel appearing for the respondent No. 2 resisting the submissions put forth by Mr. A.K. Mishra, learned Senior Counsel for the petitioner has proponed as under:

(i) The order of the learned Single Judge by no stretch of imagination can be faulted inasmuch as he has rightly held that the petitioner has no locus standi and further has not invoked the extra-ordinary jurisdiction of this Court in clean hands.

(ii) The analysis of facts made by the learned Single Judge with regard to status of the petitioner and that of the second respondent is based on facts which have been properly appreciated and hence, the order is invulnerable.

(iii) The stand and stance that the Registrar of Trade Unions has no jurisdiction to pass the interlocutory order of stay is contrary to the Scheme of the Act since the said authority is vested with the powers to deal with Unions and hence, has the authority to pass an order relating to stay of election.

(iv) The learned Single Judge has correctly held that justice has been done and, therefore, even if there had been some jurisdictional error the same did not warrant any interference in exercise of inherent jurisdiction of this Court.

(v) The Writ Court has flawlessly dealt with every facet of the case relating to genesis of the cavil; the suppression of facts by the petitioner and his locus standi; the manner in which the election was held; the role of Federation under the rules and regulations; the concept of affiliation; the impropriety shown by the petitioner in the matter of election; and when on appreciation of cumulative facts the order has been passed there is no justification for interference in the writ appeal.

To appreciate the rivalised submissions raised at the Bar, we have bestowed our anxious consideration and carefully scrutinised the order passed by the learned Single Judge and the order that was impugned before him. An English translation of the order passed by the Registrar, Trade Unions on 8-5-2007 reads as under:

Applicant Shri Pramod Namdeo is present.

Respondent No. 2 Shri Arun Bhagolival is present.

Fax dated 7-5-07 from respondent No. 1 Shri R.M. Bohidar, Chairman, Central Election Committee has been received. Application from Shri Sanjeev Chhatwal is received and he appeared and submitted that the instant election conducted by the Chairman, Central Election Committee has created a situation of chaos. There is no responsible officer available at Bhopal to consider and solve the discrepancies which have arisen in the election so that the process of election could proceed. Therefore, the validity of the election to be held on 12-5-07 should be determined so that the members can be acquainted with the real position. It was further requested that the said position should be clear on 10-5-07.

Shri R.M. Bohidar has requested by Fax dated 7-5-07 that as he is busy in other works the date may be fixed after 18th May.

Reply of the respondents is necessary as Shri R.M. Bohidar, the Chairman, Central Committee and Shri Arun Bhagoli had issued the circular dated 5-5-07 by which the decisions taken on 4-3-2007 were circulated amongst the members. It is necessary to know their stand.

It was resolved in the meeting dated 4-3-07 that the election to be held on 12-5-07 is based on the election declared by the All India State Bank of India Staff Federation. The aforesaid meeting was convened under the direction of Deputy General Secretary, Shri Arun Bhagoliwal. There is no provision in the

constitution of State Bank of India Workmen Union that the Federation can declare the election and also the meeting dated 4-3-07 in which the decision of election was taken was not called by the General Secretary as per the constitution. Hence, the election declared to be held on 12-5-07, which is being conducted by Shri R.M. Bohidar, the Chairman, Central Election Committee is being stayed (postponed).

The next date is fixed on 21-5-07 at 2:30 p.m. for reply of both the respondents.

The pivotal issue that emanates for consideration is whether such an order could have been passed by the Registrar, Trade Unions. The learned Single Judge, as has been indicted hereinbefore, has not dealt with the same. The learned Single Judge, as is perceptible, has gone by the factum of locus standi, suppression of facts and how the election had taken place. As far as locus standi is concerned, the petitioner, though was not a party before the Registrar, Trade Unions, there are averments in the petition which have not been disputed. He is a member of the Trade Union. Whether the election had been conducted in a proper manner or not or whether there had been an effort or endeavour to have a parallel body is totally immaterial to the issue in question. In our considered opinion, the member of the Trade Union is a person aggrieved when there is an interdiction in an election process. Whether the election process is right or wrong is another matter. What is relevant is the intervention or interdiction. Thus, we have no hesitation in holding that the petitioner being a member of the union, has the locus standi to invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

As far as suppression of facts are concerned, when properly viewed, it can never be treated to be suppression of facts inasmuch as the petitioner had raised a pure question of law while narrating the facts. What had happened in the interregnum period between the two contestants was not necessary to be stated in the writ petition and, therefore, it cannot be said that there has been suppression of facts. What was raised before this Court is that the Registrar, Trade Unions has interfered in the election process by granting stay, though the said authority does not have the jurisdiction to entertain a lis of this nature. In this factual backdrop how the election had been held, how the office bearers were elected, how there had been an intervention by the Federation and such other ancillary facts, we are disposed to think, have no relevance. Hence, we are of the considered opinion that no exception could have been to the same while adjudicating the writ petition.

Be it placed on record, the learned Single Judge has adverted to the merits how the election has been held and how office bearers have come into office. He has also expressed the opinion that the Union is under no obligation to get itself affiliated to the Federation and the Federation has no role to intervene. That was neither the case of the appellant nor the respondent and, in fact, such an adjudication was not necessary. What was required to be adjudicated was whether the Registrar, Trade Unions has the Statutory Authority to pass an order

of stay.

To answer the aforesaid question, it is seemly to scan the anatomy of the Trade Unions Act, 1926 (for brevity "the Act"). The aforesaid Act was brought into existence to provide for the registration of Trade Unions and in certain respects to define the law in that regard. Section 2 is the dictionary clause. Section 2(g) defines "trade disputes". Section 2(h) defines "Trade Union". Chapter II of the Act deals with "registration of Trade Union". Section 4 of the Act envisages "mode of registration". Section 5 provides for application for registration. Section 6 stipulates that a 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. Section 8 empowers the Registrar of Trade Unions to register the Trade Union by entering it in a register. Section 9 empowers the Registrar to issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under the Act. Section 9(a) provides for minimum requirement about the membership of a Trade Union. Section 10 authorises the Registrar to cancel the registration certificate on certain grounds.

Chapter III of the Act deals with rights and liabilities of a registered Trade Union. Section 21(a) engrafts the disqualification of office bearers of Trade Unions. Section 22 lays down the proportion of office bearers to be connected with the industry. Section 23 deals with change of name of a registered Trade Union and Section 24 provides for amalgamation of Trade Unions. Section 25 deals with procedure for change of name or amalgamation and Section 26 stipulates the facts of change of name and amalgamation. Section 27 of the Act deals with dissolution of the registered Trade Unions. Section 28 of the Act provides that returns shall be sent annually to the Registrar on or before such date as may be prescribed. The said provision also requires the Trade Unions to do certain acts with regard to the returns.

Apart from the aforesaid it is imperative to refer to certain amendments that have been brought in by the State of M.P. Section 28-1 refers to other powers of the Registrar. The said provision reads as under:

28-I. Other powers of Registrar. (1) For the purposes of discharging his duties generally under the Act and verifying the correctness of the annual returns submitted u/s 28, the Registrar shall have power to inspect the account books, the list of members and the minute book of a registered trade union: Provided that an inspection made under this Sub-section shall, as far as practicable, be done at the office of the registered trade union or at a place within a reasonable distance therefrom and after giving reasonable notice.

(2) For the purposes of discharging his duties under Chapter III-A, the Registrar shall, in addition to the powers mentioned in Sub-section (1), have-

(a) the following powers of a Court of civil jurisdiction under the Code of Civil Procedure, 1908 (V of 1908), namely:

- (i) power to require or accept the proof of facts by affidavits;
- (ii) power to summon and enforce the attendance of any person and to examine him on oath;
- (iii) power to compel the production of documents; and
- (iv) power to issue commission for the examination of witnesses;
- (b) power to enter and inspect any place used by the registered Trade Union as officer after giving reasonable notice; and
- (c) such other powers as may be prescribed.

Section 28-J deals with dispute as to officer of registered Trade Union. The said provision is reproduced hereunder:

**28-J. Dispute as to officer of registered Trade Union.-**

(1) If there is any dispute as to who is the lawful officer of a registered trade union, any person claiming to be such an officer or the Registrar may refer the dispute to the Industrial Court in such manner as may be prescribed.

(2) On a reference being made under Sub-section (1), the Industrial Court shall, after hearing the parties to such dispute and recording such evidence as it may consider necessary, decide the dispute and declare who is the lawful officer. The decision of the Industrial Court shall be final and shall not be called in question in any Court of law.

(3) No Civil Court shall entertain any suit or other proceedings in respect of any dispute which has been referred to the Industrial Court under Sub-section (1) and is pending before such Court and if any such suit or proceeding is pending in a Civil Court on the date of the reference the Civil Court shall on receipt of a notice from the Industrial Court cease to exercise jurisdiction in respect thereof and shall forthwith transfer the record of such suit or proceeding to the Industrial Court. ? Vide M.P. Act 28 of 1960, Section 5.

It is worthnoting certain amendments have been incorporated in Section 28-J, which basically relate to the procedural spectrum but there has been no essential change.

On a bare reading of the said provision it is clear as noon day, if there is any dispute as to the lawful officer of the registered Trade Union any person claiming to be such officer or the Registrar may refer the dispute to the Industrial Court in such a manner as may be prescribed. On a reference being made, the Industrial Court shall, after hearing the parties to such dispute and recording such evidence as it may consider necessary, decide the dispute and declare who is the lawful officer. The decision of the Industrial Court shall be final and shall not be called in question in any Court of law. Civil suit is barred in respect of any dispute which has been referred to the Industrial Court under Sub-section (1) of Section 28-J. In the case at hand, the dispute is writ large with regard to the office bearers.

The same, in our considered opinion, is within the ambit and sweep of Section 28-J of the Act. None of the provisions of the Act empowers the Registrar, Trade Unions to deal with an election dispute. The power conferred on him pertains to registration of Trade Unions, issue of certificate and cancellation of such a certificate. The moment a cavil is raised or controversy is put forth with regard to the status of office bearers the Registrar may refer the dispute or the officer bearers can raise a dispute before the Industrial Court, whose decision is final. Power of the Civil Court has been ousted. Needless to state, the same would be subject to judicial review of this Court.

Regard being had to the scheme of the things we may refer with profit to a Division Bench decision rendered by the Gauhati High Court in *Ratan Kumar Dey and Ors. v. Union of India* and Ors. 1991 LLN 506, wherein it has been held as under:

12. Besides as said before in the dispute between the rival office bearers of the Union, the Registrar of Trade Unions has no authority or power u/s 28 of the Trade Unions Act, 1926, to decide the dispute, even though he has power to make his enquiries and come to his own conclusion in the matter for the purposes of maintenance of record of office bearers of the union.

We may also fruitfully refer to a Division Bench decision of the Patna High Court rendered in *Bokaro Steel Workers Union and Anr. v. State of Bihar* and Ors. 1995 I LLN 1079, wherein Aftab Alam, J. (as his Lordship then was) speaking for the Court has expressed the view as under:

27. On an examination and analysis of the Patna decision *Mukund Ram Tanti* case (vide supra), the Allahabad, Andhra and the Madras decisions, I come to the following conclusions:

(i) In a dispute between two rival factions claiming to be the office bearers of a trade union, it is open to the Registrar to hold an enquiry for the purpose of maintaining and updating the registers required to be maintained u/s 8 of the Act.

(ii) His decision in this regard shall neither confer any right on any person or group of persons nor divest any person or group of persons of any lawful rights.

(iii) Consequently the Registrar has no authority or power to issue any direction asking/advising the Labour Department of the Government or the employer to recognise and treat any particular person or group of persons as the duly elected officer bearers of the union in dealing with that union.

(iv) The Registrar, Trade Unions, has no authority or power to direct the holding of election of the office bearers of a union under his own supervision or under the supervision of his nominee.

(v) In the absence of any provisions in the Trade Unions Act, 1926 any dispute of this kind can only be resolved by means of a suit filed before a Civil Court.

(vi) The adjudication in a suit at least in this State is normally a slow and time

consuming process and does not constitute a wholly satisfactory remedy for resolving the dispute.

(vii) The Legislature will, therefore, be well advised to address itself to this lacuna in the Trade Unions Act and to take steps to remedy it which has been long over due.

At this juncture, it is worth noting that the Division Bench of the Patna High Court had expressed its concern with regard to the lacuna in the statute. Section 28-J, the amendment brought by the State of M.P., if we permit ourselves to say so, in fact, fills up the lacuna. The Registrar, Trade Unions, is a creature of the Statute. He has to function within the parameters of the statute and cannot travel beyond it. He cannot transgress the bounds and allow himself to roam in a fanciful world. It should be kept in mind that jurisdiction is the basic facet of law. As is patent the Registrar of Trade Unions has passed an order of stay, as per Annexure P-10. An authority like the Registrar, Trade Unions does not have the powers of a Court. It is well settled in law that a Court can issue an order of injunction invoking inherent jurisdiction in cases not covered under Order 39 of the Code of Civil Procedure. It has been so held in *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, and *Ram Krishna Parashar v. Chironji Lal Vaishya and Ors.* 1977 J.L.J. 184. In *Vareed Jacob Vs. Sosamma Geevarghese and Others*, . Their Lordships have held that it is only in cases where circumstances do not fall under any of the rules prescribed then the Court can invoke its inherent powers. Order of injunction is mandated to meet the ends of justice. Order of injunction is mandated to meet the ends of justice. That apart, the inherent jurisdiction of a Court has to be exercised in exceptional and rare circumstances.

While dealing with the aforesaid facet, we think it apt to refer to a three Judge Bench decision rendered in *Income Tax Officer, Cannanore v. M.K Mohammed Kunhi* AIR 1969 SC 430, wherein the Apex Court has held as under:

4. ...It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective (*Southland Statutory Construction*, Third Edition, Articles 5401 and 5402). The powers which have been conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective....

\*\*\* \*\* Their Lordships again proceeded to state as under:

6. It is well known that an Income Tax Appellate Tribunal is not a Court but it exercises judicial powers. The Tribunal's powers in dealing with appeals are of the widest amplitude and have in some cases been held similar to and identical with the powers of an Appellate Court under the Civil Procedure Code....

\*\*\* \*\* Thereafter their Lordships eventually referred many aspects and expressed the opinion as under:

8. Section 255(5) of the Act does empower the Appellate Tribunal to regular its own procedure, but it is very doubtful if the power of stay can be spelt out from that provision. In our opinion the Appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction. This is particularly so when Section 220(6) deals expressly with a situation when an appeal is pending before the Appellate Assistant Commissioner but the Act is silent in that behalf when an appeal is pending before the Appellate Tribunal. It could well be said that when Section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceeding as will prevent the appeal if successful from being rendered nugatory.

We have referred to the said decision only to highlight that the Apex Court has expressed the opinion that the Appellate Authority when vested with the power of appeal can pass such orders which are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying the proceeding.

In the case at hand, the Registrar of Trade Unions, as has been indipmed hereinbefore, has not been conferred with any power whatsoever to deal with the election disputes. The power conferred is absolutely limited and restricted and relates to a different field. He could not have assumed any jurisdiction to entertain the lis when the lis is not entertainable. The question of passing any ancillary order does not arise when final relief cannot be granted by the authority concerned. In the absence of jurisdiction, authority to pass an order of stay or injunction is an anathema to law. It is an anathema to the basic tenet of justice to pass an order of stay or to issue an order of injunction. In this context, we may also note with profit that Election Tribunal has no inherent power of a Civil Court. In the absence of any express provision under the related Act and the Rules, the Election Tribunal does not have any jurisdiction under Order 39 or Section 151 of the CPC to grant any temporary injunction or pass an order of stay. This view of ours finds support from the decisions rendered in *Md. Siraj Ahamed Vs. The State Election Commission and Others*, ; *Sukhdev Singh v. Executive Magistrate, Samana, Dist. Patiala* 1995 AIHC 2588 (P & II) (DB). Analysis made therein relates to election dispute. An election dispute is of a different nature. It rests on a different bedrock. It has a different contour and character and hence, Courts have laid down that power has to be specifically conferred. In the absence of such conferral of power, the Tribunal cannot pass an order of restraint. Judged from these spectrums, the Registrar, Trade Unions could not have encroached upon an area and passed an order of stay relating to election. The order is a complete transgression of authority and jurisdiction.

In view of the aforesaid premises, the writ appeal is allowed and accordingly, the order of the learned Single Judge is set aside and as a sequitur, the order passed by the Registrar, Trade Unions on 8-5-2007 is quashed. There shall be no order

as to costs.