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(2016) 09 BOM CK 0102

In the Bombay High Court

Case No : Writ Petition No. 9311 of 2016.

Solapur District Central Cooperative Bank Employees Union, Solapur, i.e. The Solapur Zilla Madhyavarti Sahakari Bank Karmachari Sanghatana; Solapur (Representative and Recognised Union) Through General Secretary, Bhausaheb Sandipan More, Solapur Zilla Mad

Date of Decision : 27-09-2016

Acts Referred:
Constitution of India, 1950 — Article 226
Maharashtra Trade Unions Regulations, 1927 — Regulation 17, Regulation 18
Trade Unions Act, 1926 — Section 10, Section 6

Citation : (2016) 6 AIRBomR 258 : (2017) 2 CLR 39

Hon'ble Judges : R.M. Savant, J.

Bench : Single Bench

Advocate : Shri. S.C. Naidu i/by Shri. N.G. Helekar, Advocates, for the Petitioner; Ms. Nayana Buch i/by Shri. S.K. More, Advocates, for the Respondent No. 2

Final Decision : Dismissed

Judgement

R.M. Savant, J. - Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The writ jurisdiction of this Court is invoked against the order dated 19.07.2016 passed by the Learned Member of the Industrial Court, Solapur, by which order, the Appeal filed by the Petitioner being Appeal (ICTU) No. 01 of 2012 came to be dismissed and resultantly, the order dated 23.10.2012 passed by the Respondent No. 1 herein i.e. the Additional Registrar, Trade Union/ Additional Labour Commissioner came to be confirmed.

3. The facts giving rise to the above Petition can in brief be stated thus :

The Respondent No. 2 herein and the Petitioner are Unions operating in the Solapur District Central Cooperative Bank Ltd., Solapur. The Respondent No. 2 filed an application on 04.08.2010 before the Registrar Trade Unions, by the said application, the cancellation of the registration of the Petitioner Union was sought

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on the ground of various irregularities committed by it. It was the case of the Respondent No. 2 that in committing the said irregularities, the Petitioner Union which is representative Union had not only contravened the provisions of the Trade Unions Act, 1926 (For short "the said Act"), the Maharashtra Trade Union Regulations, 1927 (For short "the Regulations") but also the bye laws of the said Union. The gist of the irregularities alleged were to the following effect. That the Petitioner Union did not get the accounts audited since 2002 to 2007 from an approved/authorised auditor and therefore there was violation of Section 28, that the General Secretary has kept with him cash exceeding Rs. 200/- and therefore there was violation of bye law 26, that the number of members claimed by the Petitioner Union did not tally with the number of members mentioned in the yearly returns which were submitted by the Petitioner Union, that the Petitioner Union had collected monthly subscription of Rs. 5/- instead of Rs. 2/which was in violation of its bye laws, that one Shri. B.S. More was appointed as the General Secretary of the Petitioner Union though not entitled to be a member as he is working as a Assistant Manager/ Deputy Manager the same was therefore in violation of the bye laws of the Respondent Union, that the elections were not held from the year 2002 to 2007 and the yearly meeting not conducted.

4. It seems that after the filing of the application, the Additional Registrar, Trade Unions i.e. the Respondent No. 1 herein issued notices to the Petitioner Union on 20.10.2010 and 10.11.2010. In spite of the said notices, the Petitioner Union did not remain present. As a result of which a show-cause notice under Section 10(b) of the said Act came to be issued on 03.12.2010 asking the Petitioner Union that it should submit its reply within 60 days. It seems that the Petitioner Union failed to file any reply to the said application. As a result of which, the Respondent No. 1 passed an order on 17.02.2011 and cancelled the registration of the Petitioner Union. It appears that in so far as the reply filed by the Petitioner Union is concerned, the same was filed on 04.02.2011 in the office of the Respondent No. 1. However, the same was produced before the Respondent No. 1 on 07.03.2011 after the order cancelling the registration came to be passed on 17.02.2011. The Petitioner Union thereafter challenged the said order dated 17.02.2011 before the Industrial Court, Solapur by filing an Appeal which was numbered as Appeal No. 01 of 2011. The Learned Member of the Industrial Court, Solapur set aside the order passed by the Respondent No. 1 dated 27.01.2012 and remanded the matter back to the Respondent No. 1 for a denovo consideration of the application by giving opportunity to the parties. The said order came to be challenged by way of a Writ Petition in this Court. However, the said Writ Petition came to be dismissed by a Learned Single Judge by order dated 10.08.2012 and the order of remand passed by the Industrial Court accordingly came to be confirmed.

5. On remand, the Respondent No. 1 issued a fresh notice to the Petitioner Union calling upon it to file its reply. The Petitioner Union accordingly filed its reply dated 04.10.2012 to which were annexed various documents which inter alia included the audit reports for the year 2002 to 2007 carried out on 26.05.2011,

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the minutes of the meeting of the managing committee of the Petitioner Union, wherein a decision was taken to hold elections which minutes are dated 22.02.2014 and the minutes of the meeting of the general body held on 28.03.2004. The Respondent No. 1 herein considered the said documents and held that the allegations made by the Respondent Union were proved. The Respondent No. 1 further held that the same amounted to a wilful contravention of the Act and the Rules and therefore the registration of the Petitioner Union was required to be cancelled. In so far as the audit reports were concerned, the Respondent No. 1 adverted to the fact that the Petitioner Union had submitted accounts audited by one Shri. P.J. Pandit who was not an auditor covered by the provisions of Section 10 of the said Act who could carry out audit in respect of the Petitioner Union. In so far as the audit reports submitted by the Petitioner Union which audit was carried out by a Chartered Account is concerned, the Respondent No. 1 did not take cognizance of the same in view of the fact that the said audit was carried out for the year period 2002 to 2007 at one go on 25.06.2011. In so far as the elections are concerned, the Respondent No. 1 came to a conclusion that elections were not held since the year 2002. In so far as the increase in subscription is concerned, the Respondent No. 1 held that the Petitioner Union is collecting subscription at the increased rate without there being any amendment which provides that the subscription to be at Rs. 2/- per annum. In so far as Shri. B.S. More being an office bearer of the Petitioner Union is concerned, the Respondent No. 1 observed that Shri. B.S. More was an Assistant Manager/Deputy Manager and therefore held a post higher than that of Chief Officer and therefore was not eligible to be a member of the Petitioner Union much less being an office bearer. In so far as said Shri. B.S. More keeping petty cash of more than Rs. 200/is concerned, the Respondent No. 1 observed that the audit report shows that against the name of Shri. B.S. More huge amounts have been mentioned, for which there is no explanation from the Petitioner Union. As indicated above, the Respondent No. 1 therefore arrived at a conclusion that the Petitioner Union has wilfully contravened the provisions of the said Act, the Regulations and its bye laws and therefore its registration is required to be cancelled and accordingly passed the order dated 23.10.2012.

6. The Petitioner Union aggrieved by the said order dated 23.10.2012 filed an Appeal before the Industrial Court, Solapur which was numbered as Appeal (ICTU) No. 01 of 2012. The said Appeal was heard by the Learned Member of the Industrial Court, Solapur who has by the impugned order dated 19.07.2016 dismissed the same. The Learned Member of the Industrial Court whilst dismissing the Appeal has confirmed the findings of the Respondent No. 1 on the said five grounds which have been adverted to herein above. However whilst dismissing the Appeal, the Learned Member of the Industrial Court has observed that though the Petitioner Union was having the knowledge about the filing of the application for cancellation of its registration by the Applicant Union, it did not contest the matter nor did it produce the record, and produce evidence before the Respondent No. 1. The Learned Member has adverted to the recording made

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by the Respondent No. 1 in his order which is to the effect that in spite of opportunities being granted to the Petitioner Union between 09.04.2012 to 20.09.2012 but except filing the say/explanation on 02.02.2011 and 04.10.2012 nothing was done by the Petitioner Union to rebut the allegations made against it by the Respondent Union. The Learned Member of the Industrial Court held that whatever material was produced by the Petitioner Union has been considered by the Respondent No. 1 whilst passing the impugned order. The Learned Member of the Industrial Court concluded that the material on record shows that the Respondent Union has proved that there is wilful contravention of the provisions of the said Act as well as the Regulations and the bye laws of the Respondent Trade Union. The Learned Member held that the order passed by the Respondent No. 1 was just, legal and proper and does not require any interference and accordingly dismissed the Appeal by the impugned order.

7. Submission of the Learned Counsel for the Petitioner Shri. S.C. Naidu :

A) That the Petitioner has submitted its audited accounts from year to year as mandated by Section 28 of the said Act through Shri. P.J. Pandit who is a grade I officer working with the Solapur District Central Cooperative Bank. The said audited accounts are for the year 2002 to 2007. It is on account of the objections raised by the Respondent No. 1 i.e. Petitioner Union that out of abundant caution the accounts were re-audited through a Chartered Accountants Firm which re-audited accounts have been submitted during the course of the hearing of the application.

B) That the default if any in filing the audited accounts in the facts and circumstances of the case cannot be said to be wilful default which could attract the penalty of cancellation of the registration. Reliance is placed on the judgment of a Learned Single Judge of this Court reported in 1996(2) Mh.L.J. 10 in the matter of Saraswat Coop. Bank Employees'' Union v. State of Maharashtra and others and the judgment of a Division Bench of the Rajasthan High Court reported in 1998 III L.L.J. (Suppl.) 1226 in the matter of Registrar of Trade Unions and Joint Labour Commissioner (H.Q.) v. Lake Palace Hotel Karya Karta Union & Another as also the judgment of a Learned Single Judge of this Court reported in 1993 Mh.L.J. 1081 in the matter of Tata Electric Companies Officer Guild v. Registrar of Trade Unions.

C) That the material relating to the factum of the elections being held on 28.03.2004 was placed before the Additional Registrar as also before the Industrial Court, however the Additional Registrar as well as the Industrial Court in spite of the said material being placed has proceeded on a erroneous premise that no material was placed by the Petitioner Union.

D) That the decision having been taken to enhance the subscription from Rs. 2/- to Rs. 5/-, the amendment to the Constitution was a mere formality, that no member had made any grievance in respect of the said enhancement of subscription as the subscription was being paid by the check off system.

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E) That in respect of retention of cash by Shri. B.S. More, General Secretary of the Petitioner Union, the authority below i.e. the Additional Registrar, Trade Union and the Industrial Court have misread the statement of accounts. The statement of accounts clearly show that no cash was retained by Shri. B.S. More and in fact cash was brought in by Shri. B.S. More by way of subscription.

F) That the Respondent No. 1 did not have the locus standi to file the application under Section 10 of the said Act, as the same can only be filed by the Union for cancellation or withdrawal of registration.

G) That the penalty of cancellation of registration is too harsh in the facts and circumstances of the case. Reliance is placed on the judgment of a Learned Single Judge of this Court reported in 1998(2) L.L.N. 752 in the matter of Tata Memorial Hospital Workers'' Union and another v. Madhukar S. Wani and others as also on the judgment of a Learned Single Judge of the Madras High Court reported in 1994 II CLR 135 in the matter of Leather and Leather Goods Democratic Labour Union v. First Additional Registrar of Trade Union I (Deputy Commissioner of Labour, Madras).

8. Submissions on behalf of the Learned Counsel appearing for the Respondent No. 2 Ms. N.D. Buch :

I) That there is a discrepancy between the membership claimed by the Petitioner and the actual membership found on verification.

II) That the accounts being audited by Shri. P.J. Pandit who is not a person contemplated by Rule 18, the said audit reports are of no consequence. The subsequent audits by a Chartered Accountant firm for the years 2002 to 2007 is all at one go, which is done on 25.06.2011. The said audit reports cannot be accepted and hence there is a contravention of the Act and the Regulations.

III) That the documents filed by the Petitioner itself demonstrate that there is a discrepancy in the date of the elections, whereas in one set of audit reports it is mentioned that the elections were held in the year 2003, in another set, it is mentioned that the elections were held in the year 2004. Hence, the objection raised on the said ground has been rightly upheld by the authority below and the Industrial Court.

IV) From the list produced by the Solapur District Central Cooperative Bank which gives the hierarchy of posts in the Solapur District Central Cooperative Bank. It is ex facie clear that the post of Assistant Manager/Deputy Manager is higher than the post of Chief Officer and therefore Shri. B.S. More was not entitled to be a member of the Petitioner Union and consequently General Secretary of the Petitioner Union. Hence, there is contravention of the Constitution of the Petitioner Union.

V) That in respect of the amount shown against the name of Shri. B.S. More in the audited accounts, no explanation has been given by the Petitioner.

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VI) That without amending its Constitution, the Petitioner raised the subscription from Rs. 2/- to Rs. 5/- which is therefore against the Constitution.

VII) That the application filed by the Respondent No. 1 is maintainable under Section 10 having regard to the language of Section 10 of the said Act.

VIII) That the authorities below i.e. the Additional Registrar Trade Unions and the Industrial Court having recorded findings of fact on the various grounds of objection this Court in its writ jurisdiction under Article 227 of the Constitution of India ought not to interfere with the impugned order.

Consideration

9. Having heard the Learned Counsel for the parties, I have considered the rival contentions. Before proceeding to deal with the contentions raised on behalf of the parties, it would be necessary to refer to the statutory framework within which the above Petition is required to be adjudicated. The Act in contention is the Trade Unions Act, 1926, the Maharashtra Trade Union Regulations, 1927 and the relevant bye laws of the Constitution of the Petitioner Union which Constitution is referable to Section 6 of the said Act. The application for cancellation of registration has to be filed under Section 10 of the said Act. Sections 6 and 10 of the said Act are reproduced hereinunder for the sake of ready reference :

"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:

(a) the name of Trade Union;

(b) the whole of the objects for which the Trade Union has been established;

(c) the whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;

(d) the maintenance of a list of the members of the Trade Union and adequate facilities for the inspection thereof by the [office bearers] and members of the Trade Union;

(e) 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 [office bearers] required under section 22 to form the executive of the Trade Union;

[(ee the payment of a subscription by members of the Trade Union which shall be not less than

(i) one rupee per annum for rural workers;

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(ii) three rupees per annum for workers in other unorganised sectors; and

(iii) twelve rupees per annum for workers in any other case].

(f) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members;

(g) the manner in which the rules shall be amended, varied or rescinded;

(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 office bearers of the Trade Union shall be elected];

(i) the safe custody of the funds of the Trade Union, and annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the [office bearers] and members of the Trade Union; and

(j) the manner in which the trade union may be dissolved."

"10. Cancellation of Registration. A certificate of registration of 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;"

10. A reading of Rule 6 therefore discloses that the Union seeking registration has to provide for the Constitution of the Executive according to the provisions of the Act, and also has to make Rules to provide for matters mentioned in the said Section. In the instant case, the Petitioner Union has framed its Constitution providing for the matters mentioned in Section 6. In terms of Section 10, the cancellation of the certificate of registration or withdrawal of the said registration is on the application of the Trade Union to be verified in such manner as may be prescribed or 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.

11. In so far as the audited returns are concerned, the same are to be sent annually to the Registrar on or before such date as may be prescribed. The same are to be in respect of all receipts and expenditure during the year ending 31st

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December on the preceding subscribed date. The relevant excerpt of the said provision is reproduced hereinunder :

"28. Returns. (1) There shall be sent annually to the Registrar, on or before such date as may be prescribed, a general statement, audited in the prescribed manner, of all receipts and expenditure of every registered Trade Union during the year ending on the 31st day of [December] next preceding such prescribed date, and of the assets and liabilities of the Trade Union existing on such 31st day of [December]. The statement shall be prepared in such form and shall comprise such particulars as may be prescribed.

(2) Together with the general statement there shall be sent to the Registrar a statement showing all changes of [office bearers] made by the Trade Union during the year to which the general statement refers, together also with copy of the rules of the Trade Union corrected up to the date of the despatch thereof to the Registrar."

In terms of sub Section (2) of Section 28 of the said Act, the Union is required to send to the Registrar a statement showing all changes made by the Trade Union in respect of its office bearers during the year to which the general statement refers. In so far as the Maharashtra Trade Unions Regulations, 1927 are concerned, Regulations 17 and 18(3) are material and are reproduced hereinunder :

"17. Annual returns.(1) The general statement to be furnished under section 28 shall be submitted to the Registrar by the 30th day of April in each year and shall be in Form "1".

(2) For the purpose of satisfying himself that the information contained in the general statement furnished under sub-regulation (1) is correct, the Registrar may require any registered Trade Union to produce before him any documents or to furnish such information or may make or may authorise any person to make such investigation as he thinks necessary.

18. Audit.(1).....

(2).....

(3) Where the membership of a registered Trade Union did not at any time during the year ending on the 31st day of December exceed 1,000 the annual audit of the Accounts may be conducted

(a) by any two persons holding office as a magistrate or a judge or as a councillor of any municipality or member of a district local board or of either Chamber of the provincial or Central Legislature;

(b) by any person who, having held an appointment under the Central Government in any audit or accounts department, is in receipt of pension from the Central Government of not less than Rs. 75 a month; or

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(c) by any auditor appointed to conduct the audit of cooperative societies by the Provincial Government or by the Registrar of Cooperative Societies or by any Provincial cooperative organisation recognised by the Provincial Government for this purpose."

12. In so far as the Constitution of the Petitioner Union is concerned, the definition of "Employee" and bye law (3) relating to membership is relevant and is reproduced hereunder :

"Employee" Means any person below the rank of Chief Officer serving in the Sholapur Dist. Central Coop. Bank Ltd., Sholapur and other Coop. Bank situated in the Solapur District local areas."

"3) MEMBERSHIP

The membership of the Union shall be open to all the employees serving in the Cooperative Banks situated in Solapur District to which B.I.R. Act is applicable.

a) Any person employed in the Banking Industry in the local area of the Solapur District and who has obtained age of 18 years shall be entitled to become an ordinary member of the Union on payment of Admission fee Rs. 1/- and monthly subscription of Rs. 2/provided be agrees to abide by rules and Bye-laws that may be made by the Union from time to time.

b) The Executive Committee may refuse admission to, or cancel the membership of a peson who acts in manner prejudicial to the interest of the Union or any other way is an undesirable person, provided that in case of cancellation of membership, the member concerned shall be notified in writing, giving 3 days time, to explain his misconduct.

c) The person who is refused admission or whose membership is cancelled may appeal to the General Meeting and the decision of the General Meeting is final.

d) The Union shall remove from the members list names of those who have died, withdrawn from the union or ceased to be members under any provision of the constitution.

e) A person who comes to be a member of the Union shall forthwith be dis entitled from exercising the rights of a member and shall have no claim on the funds and benefits of the Union."

13. Now coming to the application for cancellation is concerned, the same was filed on 04.08.2010 by the Respondent No. 1 herein inter alia on a number of grounds which are mentioned in the said application. However ultimately the grounds were restricted to the grounds which have been mentioned herein above. In so far as the application is concerned, two notices were issued to the Petitioner Union on 20.10.2010 and 10.11.2010. In spite of the notices being issued to the Petitioner Union, it did not remain present as a consequence of which a show-cause notice under Section 10(b) of the said Act came to be issued on 03.12.2010. In the said show-cause notice, the Petitioner Union was informed

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that it should submit its say within 60 days. It appears that the Petitioner filed its reply on 02.02.2011 however it seems that the said reply reached the office of the Respondent No. 1 on 05.02.2011 and was not placed before the Respondent No. 1 when he decided the matter in the first round on 07.02.2011 thereby allowing the said application and cancelling the registration of the Petitioner Union as a registered Trade Union. The Petitioner Union thereafter filed an Appeal before the Industrial Court being Appeal No. 1 of 2011. The Learned Member of the Industrial Court allowed the said Appeal and set aside the order passed by the Labour Court and remanded the matter back to the Respondent No. 1 for a denovo consideration of the application for cancellation. The said order of the Industrial Court is dated 27.01.2012. Though a fresh notice was not required to be issued to the Petitioner Union having regard to what had already transpired in the past, the Respondent No. 1 however issued a fresh notice to the Petitioner who thereafter filed a reply on 04.10.2012. To the said replies, the Petitioner produced statement of the audited account by a Chartered Accountants firm for the period 2002 to 2007. The material relating to the elections which took place on 28.03.2004, which material was apart from the statement of the list of office bearers which was annexed to the audited statement of accounts. Hence in so far as the Petitioner is concerned, though belatedly it had sought to place the material on the basis of which it sought to counter the allegations made against it of the contravention of the Act, Regulations and the bye laws, in the matter of non-submission of the audited accounts, not holding of elections etc.

14. The Respondent No. 1 in his impugned order has held that the audit carried out by Shri. P.J. Pandit could not be accepted as he was not authorised to do so in terms of Regulation 18. In so far as the subsequent audit is concerned, the Respondent No. 1 held that the same also could not be accepted as the audit was sought to be done for the entire period i.e. 2002 to 2007 at one go. In so far as the elections are concerned, the Respondent No. 1 held that since there is a discrepancy in the record, the case of the Petitioner that the elections were held, could not be accepted. This was the finding of the Respondent No. 1 on the aforesaid two objections or grounds taken by the Respondent No. 1 herein in respect of the other grounds also, the Respondent No. 1 held against the Petitioner. In so far as the Learned Member of the Industrial Court is concerned, on the said two issues, the Learned Member has held that there is a contravention of the provisions of Regulation 18 of the Regulations by the Petitioner in the matter of carrying out the audit through Shri. P.J. Pandit. The Learned Member has referred to the affidavit filed by Shri. P.J. Pandit dated 07.07.2012, in which affidavit he has stated that he is not a Chartered Accountant and that he is not authorised to carry out the audit and has done so under the pressure of the Petitioner Union. In so far as the holding of elections is concerned, the Industrial Court held that since the last election was held in the year 1999-2000 and since no evidence was produced nor explanation given by the Petitioner Union, the finding of the Respondent No. 1 that there is violation of Section 6 of the said Act as well as bye law 13 and 22 of the Constitution of the

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Petitioner Union, cannot be faulted with. In so far as the other issues are concerned, the Learned Member of the Industrial Court confirmed the findings of the Respondent No. 1.

15. It would now be necessary to deal with the grounds on which the cancellation of the registration of the Petitioner is sought.

Taking the last ground first, namely i.e. Whether the Respondent No. 2 i.e. the Applicant before the Respondent No. 1 has the locus standi to file the application.

The answer to the same lies in Section 10 of the said Act. Section 10 postulates an application for cancellation or withdrawal to be filed by the Trade Union to be verified in such manner as may be prescribed. Hence in so far Section 10(a) of the said Act is concerned, an application can be filed by the Trade Union itself for its withdrawal or cancellation of registration. Now coming to Section 10(b), the same confers the power on the Registrar of Trade Unions if he is satisfied that the certificate has been obtained by fraud or mistake or that the Trade Union ceased to exist or has wilfully and after notice from the Registrar contravened any provisions of the Act. Hence, the cancellation has to be in the circumstances mentioned in Section 10(b) of the said Act. Apart from an application, he can also take cognizance if any complaint is brought before him suo moto under the said provisions. Having regard to the grounds which are mentioned in Section 10(b), it is not possible to accept the contention urged on behalf of the Petitioner that under Section 10(b) also the application has to be by the Trade Union concerned. It is impossible to accept the situation where the Trade Union itself applies to the Registrar for cancellation on the ground that the said certificate of registration has been obtained by fraud or mistake or that the Trade Union has wilfully contravened any provisions of the said Act. Hence under Section 10(b) either the Registrar has to act suomoto or on the basis of an application received by him where the grounds contained in Section 10(b) are alleged. If an interpretation sought to be given by the Learned Counsel for the Petitioner is to be accepted, then Section 10(b) would be turned otiose as no Trade Union can be expected to complain against itself. Hence the application filed by the Respondent No. 1 was maintainable.

16. Discrepancy between the membership claimed and the membership found on verification :On verification of the documents, it is found that the membership of the Petitioner Union for the period 2002-2007 is found varying, than the claim made for the particular year. This is sought to be attributed to the fact that the same is on account of the fact that some members have not paid their subscription for the particular year. In my view, the said stand cannot be accepted in view of the fact that it is the case of the petitioner that the subscription was recovered by the check off system, and that no member had any grievance about the enhanced subscription. The said fact only proves that the Petition is not aware of its exact membership and therefore reflects on the manner in which the affairs of the Petitioner are being conducted.

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17. Non-submission of the audited accounts for the period 2002 to 2007 :

In so far as the said ground is concerned, it is required to be noted that the Petitioner had submitted the accounts audited by Shri. P.J. Pandit for the year 2002 to 2007. It is in view of the objection raised by the Respondent No. 1 that the Petitioner got accounts re-audited for the year 2002 to 2007 through the firm of a Chartered Account. The same was carried out in one go as can be seen from the audited account which all bear the date 25.06.2011. In terms of Regulation 18 of the said Regulations, the accounts of the Petitioner which has a membership not exceeding Rs. 1000/- has to be carried out through an auditor of the class mentioned in the said provision. There is no dispute about the fact that Shri. P.J. Pandit was not such an auditor as contemplated by the said provision. The Petitioner sought to make amends by getting the accounts audited through a Chartered Accountant, but the same was done, as indicated above, all at one time i.e. 25.06.2011. The audited statement of the particular years were therefore not submitted as contemplated by the Act and the Regulations. The question therefore is whether there is a contravention of the provisions of Section 28 of the said Act, the Regulations and whether for such a breach, the penalty of cancellation of registration is to be visited on the Petitioner.

18. Ground of elections not being held since the year 2002 :

As per bye law 12 of the Constitution, the elections to the Managing Committee has to be held every three years. In so far as the said ground is concerned, the audited statements of accounts have been submitted by the Petitioner. In the said audited statements of accounts for the year 2002 to 2007 submitted through Chartered Accountant Shri. D.V. Barpute & Co. is annexed the list of office bearers of the Petitioner Union for the relevant years. Except for two years i.e. 2005 and 2006 in rest of the audited statements of those particular years the elections are shown to be held on 28.03.2004. Only for the years 2005 and 2006 the elections have been shown to be held in the year 2003. However in spite of the said material being on record and though the years in contention as per the application filed by the Respondent No. 1 Union were the year between 2002 to 2007, the Respondent No. 1 herein has erroneously proceeded to consider whether the elections were held upto the year 2009. The material placed on record by way of the minutes of the managing committee dated 22.02.2014 as also minutes of the general body meeting on 28.03.2004 support the case of the Petitioner that the elections were held on 28.03.2004. The Respondent No. 1 therefore appears to have proceeded on an erroneous premise that the elections were not held after 2002. The said finding therefore appears to be contrary to the aforesaid material which is on record.

19. Shri. B.S. More though not entitled to be a member has been discharging duties of the General Secretary :

As per the Constitution of the Petitioner Union, an "employee" is a person holding a post below that of Chief Officer of the Solapur District Central Cooperative

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Bank. Hence only such employee can be a member of the Petitioner Union. In the instant case, there is no dispute about the fact that Shri. B.S. More was holding the post of Assistant Manager/Deputy Manager which in the hierarchy of the posts available in the Solapur District Central Cooperative Bank are higher than the post of Chief Officer and therefore Shri. B.S. More was not entitled to become a member of the Petitioner Union much less to be its General Secretary.

20. Cash in excess of Rs. 200/- retained by Shri. B.S. More as General Secretary :

In terms of bye-law 26 of the Constitution, the General Secretary of the Petitioner Union cannot retain cash exceeding Rs. 200/. In the instant case, the Respondent No. 1 on the basis of the audited accounts has come to a conclusion that the said Shri. B.S. More was holding cash to the extent of Rs. 15,000/and therefore there is a violation of the said Regulation. The said finding was sought to be questioned by the Learned Counsel appearing on behalf of the Petitioner by contending that the amount shown against the name of Shri. B.S. More is the amount brought by Shri. B.S. More by way of subscription to the Union and is not cash which has been retained by Shri. B.S. More. However, no such explanation has been forwarded in the reply filed by the Petitioner Union and it is for the first time in the above Writ Petition that such an explanation is sought to be given. The Respondent No. 1 was therefore right in coming to a conclusion that the Petitioner Union has not given any explanation for the said huge amount being shown against the name of Shri. B.S. More in the audited statements of accounts. Since the Petitioner Union is a representative Union, it is expected that it shows transparency and probity in its affairs and therefore the conduct where no explanation is given, cannot be countenanced.

21. After dealing with each of the grounds on which the application filed by the Respondent No. 1 was founded as above, the conclusion that is reached is that there is a contravention of Section 28 and Regulation 17 in the matter of filing audited returns, there is contravention of the Constitution of the Petitioner Union in the matter of Shri. B.S. More holding the post of General Secretary, as also a breach of bye law 26 of the Constitution in the matter of large amounts being kept with Shri. B.S. More though in terms of the said clause, the General Secretary is not entitled to keep more than Rs. 200/in cash. Though the ground of the elections not being held since the year 1999 cannot be held against the Petitioner. It would have to be said that the Petitioner has just about managed to come out of the clutches of the said ground. However, the fact remains that the elections were held in the year 2004 when in fact the elections were due in the year 2002 itself. The elections held were also unopposed. Though the period beyond 2007 is not in contention, however, from the record it appears that no elections have been held after the year 2004. The facts relating to the elections therefore reflect poorly on the affairs of the Petitioner especially having regard to the fact that it is a representative Union and therefore a certain amount of transparency and probity in its affairs is expected especially having regard to the fact that it is the representative of the employees in collective bargaining.

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22. The question that arises is as to penalty/punishment which the Petitioner Union is to be visited. The test laid down by Section 10(b) of the said Act is of wilful contravention. The word "wilful" has been interpreted to mean knowingly, intentionally or deliberately. It would therefore have to be seen whether the contravention of the Act or the Constitution as alleged by the Respondent No. 1 is wilful on the part of the Petitioner. In so far as the non-submission of the audited accounts is concerned, the Petitioner Union was aware of the fact that in terms of Regulation 18, Shri. P.J. Pandit was not authorised to carry out the audit of its accounts. However in spite of the same, for the period in contention i.e. years 2002-2007, the audit was got done through Shri. P.J. Pandit who is admittedly not the designated person in terms of the said Regulation 18. It is in fact admitted by Shri. P.J. Pandit that he is not a Chartered Accountant but an officer working with the Solapur District Central Cooperative Bank and was forced to carry out the audit by the Petitioner. The subsequent audit carried out through the firm of Chartered Accountants namely M/s. D.V. Barpute and Company would be of no avail as the said audit has been carried out at one go i.e. on 26.05.2011 for the entire period from 2002-2007. Hence the Petitioner Union can be said to have contravened the provisions of the Act, the Regulations and the Constitution though aware of the same and therefore the said contravention would have to be held to be wilful.

23. In so far as the ground of Shri. B.S. More holding the post of General Secretary is concerned, clause (3) of the Constitution of the Petitioner Union stipulates as to who can be a member of the Petitioner Union. The said clause provides that a person holding the post above the Chief Officer in the Solapur District Central Cooperative Bank cannot be a member of the Petitioner Union. In spite of the said provision, Shri. B.S. More who was admittedly holding the post of Assistant Manager and thereafter Deputy Manager which were above the post of Chief Officer, could not have been enrolled as a member much less appointed as the General Secretary. The said contravention in the teeth of the stipulation in the Constitution is therefore wilful.

Now coming to the ground of Shri. B.S. More retaining the amount in excess of Rs. 200/. The audited accounts of the Petitioner Union show large amounts being shown against the name of Shri. B.S. More as a loan. There is absolutely no explanation from the Petitioner in respect of the said amounts. The Respondent No. 1 has also observed that as per the evidence produced by the Complainant Union the amount of Rs. 3,50,000/was required to be deposited in the account of the Petitioner as per law but was not done so and misappropriated. In the absence of any explanation, the retention of such huge amounts by Shri. B.S. More without any explanation from the Petitioner can be said to be wilful breach of bye law 26 of the Constitution of the Petitioner. In so far as the contravention in respect of non-filing of audited accounts, Shri. B.S. More holding the post of General Secretary and retaining cash more than Rs. 200/- are concerned, apart from they being wilful, they can also said to be blatant.

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In so far as the collection of enhanced subscription is concerned, though it is the case of the Petitioner Union that a resolution has been passed enhancing the subscription, but the fact remains that the Constitution has not been amended and without amending the Constitution, the subscription at the enhanced rate is being collected. The aforesaid fact therefore also does not speak well as regards the manner in which the affairs of the Petitioner Union are being conducted. Hence the upshot of the above discussion is that some of the grounds on which the application filed by the Respondent No. 1 as above would have to be sustained and it would have to be held that there is a wilful contravention of the said Act, the Resolutions and the Constitution of the Petitioner Union. The contravention of the Constitution indirectly amounts to breach of the Act as the Constitution has been framed as per the requirement of Section 6 of the said Act.

24. Now coming to the judgments on which reliance is placed on behalf of the Petitioner in Tata Memorial Hospital Workers'' Union and another''s case (supra), since a judicial proceeding was already pending based on the self same allegations which had formed the basis of the order passed by the Registrar Trade Unions cancelling the registration of the Petitioner Union, a Learned Single Judge of this Court had set aside the order cancelling the registration on the said ground as the Learned Judge was of the view that it is in the said proceedings that the issue would be decided.

In Tata Electric Companies Officer Guild''s case (supra), a Division Bench of this Court in view of the fact that the mistake in submitting the returns for the wrong year was corrected immediately, held that there was no wilful contravention of the act and therefore set aside the cancellation of registration. Similar is the position in Saraswat Coop. Bank Employees'' Union''s case (supra), where another Division Bench of this Court did not find the contravention to be wilful as the return was filed on the date of the passing of the order.

In Leather and Leather Goods Democratic Labour Union''s case (supra), in the facts of the said Act a Learned Single Judge of the Madras High Court held that the contravention was not wilful and therefore set aside the cancellation of the registration of the Union.

In Registrar of Trade Unions and Joint Labour Commissioner (H.Q.)''s case (supra), the Division of the Rajasthan High Court held that before cancellation, a second show-cause notice was required to be issued. The Division Bench however further held that where contravention is of a different kind one single notice of two months may be sufficient.

In Chairman, All India Railway Recruitment Board and another''s case (supra), the Apex Court was considering the application of the Wednesbury principle and the principle of proportionality, to the judicial review of an administrative order. In the said case, the Railway Recruitment Board had taken a decision to cancel the written examination and to conduct a retest for recruitment to group ''D'' posts for those candidates who had obtained minimum qualifying marks in the

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first written examination against which large scale of irregularities and malpractices were noticed. The decision to hold the retest was therefore in contention before the Apex Court as the High Court had held that there was no illegality in going ahead with the recruitment process confining investigation to 62 candidates against whom there were serious allegations of impersonation. The Apex Court in the facts of the said case came to a conclusion that the decision of the Railway Recruitment Board to conduct a retest satisfies the Wednesbury test as also the proportionality test.

25. In the instant case, the power of the Respondent No. 1 to cancel the registration of a Union is circumscribed by the statutory provisions. It is only if the circumstances as mentioned in Section 10 of the said Act exists that the said power can be exercised. The penalty is also provided by the statute, and is required to be imposed having regard to the nature and extent of the contravention. The order passed by the Respondent No. 1 has therefore partakes the character of a quasi judicial order which is amenable to an Appeal under the said Act. In my view therefore the judicial review of the order passed by the Respondent No. 1 as confirmed by the Appellate Court i.e. the Industrial Court would be on different parameters than an administrative order. Hence strictosenso the Wednesbury principle and the proportionality principle would not apply. However in the facts of the present case, the order passed by the Respondent No. 1 as confirmed by the Appellate Court cannot be said to be unreasonable, neither the penalty or punishment can be said to be disproportionate to the contravention proved. For the conclusion that this Court has reached, namely that there is a wilful and blatant contravention of the Act, the Regulations and the Constitution, this Court confirms the findings of the authority below, as also the Industrial Court. The impugned orders therefore do not suffer from any error of jurisdiction or any other illegality or infirmity for this Court to interfere in its writ jurisdiction. The Writ Petition is accordingly dismissed. Rule is discharged with parties to bear their respective costs.

After pronouncement of Judgment

At this stage, the Learned Counsel for the Petitioner seeks continuation of the ad interim order dated 18.08.2016 as clarified by the order dated 07.09.2016 which is operating in the above Petition. In the facts and circumstances of the case, the said ad interim order is continued for a period of eight weeks from date.

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