

Supreme Court of India

State Bank Of Indian Staff ... vs State Bank Of Indian And Others on 3 April, 1996

Equivalent citations: 1996 AIR 1685, 1996 SCC (4) 378

Author: F Uddin

Bench: Faizan Uddin (J)

PETITIONER:

STATE BANK OF INDIAN STAFF ASSOCIATION AND ANR.

Vs.

RESPONDENT:

STATE BANK OF INDIAN AND OTHERS

DATE OF JUDGMENT: 03/04/1996

BENCH:

FAIZAN UDDIN (J)

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FAIZAN UDDIN (J)

KULDIP SINGH (J)

CITATION:

1996 AIR 1685

1996 SCC (4) 378

JT 1996 (4) 100

1996 SCALE (3) 249

ACT:

HEADNOTE:

JUDGMENT:

WITH WRIT PETITION NO. 713 OF 1995 State Bank of India Staff Association and another V.

State Bank of Indian and others J U D G M E N T FAIZAN UDDIN, J.

1. The parties in the aforementioned Civil Appeal and the Writ Petition are the same with the distinction that in the Civil Appeal, the appellants have challenged the order dated July 17, 1995 passed by a Division Bench of the Allahabad High Court, Bench Lucknow, dismissing the Writ Petition no. 1662 (M/B) of 1995, filed by the appellants on the ground that the same was not maintainable as the earlier Writ Petition no. 400 (S/B) of 1995 was dismissed as withdrawn without permission to file a fresh petition for the same relief. While the Writ Petition under Article 32 of the Constitution of India pertains to the relief for quashing of the letter dated May 3, 1995 issued by the respondents to the General Secretary of the SBI Staff Association, Lucknow Circle and also for a writ of mandamus commanding the respondents not to interfere with the affairs of the petitioner

Association and to negotiate with the appellant/petitioner No. 2 Mr. M.R. Awasthy who Claims to be the General Secretary of the State Association. The appellants and the petitioners being the same, they shall hereinafter be referred to as the appellants.

2. The facts in brief as they emerge from the memo of appeal and the writ petition are that the State Bank of India, respondent No. 1 is divided into 13 local Head Offices including one at Lucknow. These Head Offices are called Circles of the respondent Bank. In all the circles there is a Circle Management consisting of Chief General Manager and General Managers. The appellant No. 1 - The State Bank of India Staff Association (hereinafter referred to as the Staff Association') is an affiliate of the All India State Bank of India Staff Federation (hereinafter referred to as the Staff Federation'), a registered Trade Union. under The Trade Unions Act. 1926 (hereinafter referred to as the 'Act'). The Staff Association represents the workmen / employees of Lucknow Circle. According to the appellants, there is an Office of the Staff Association in each circle as well as in each branch of respondent Bank throughout the country. The Staff Association represents the workmen / employees of the respective circles through its lawfully elected Office bearers in accordance with the Constitution and Bye-laws of the Staff Association , having a right to negotiate to industrial matters as the Circle Associations and their duly elected members are recognized by the respondents. Further case of the appellants is that according to the Code, the Joint Consultative Committee comprising the Management and the representatives of the Staff Association is constituted at two levels, namely, (1) at the Central Level with respondent No. 1 and (2) in each local Head Office of the Circle of respondent No. 1, which are called as a Central Consultative Committee and Circle Consultative Committee of the Bank respectively. The Central Consultative Committee is represented through the Staff Federation and the Circle Consultative Committee is represented through the Circle Staff Association.

3. Further case of the petitioners is that in the Circle General Body Meeting of the Staff Association held at Lajpat Bhawan, Kanpur on October 16, 1994 M.R. Avasthi, appellant No. 2 was elected as General Secretary of the Staff Association for a period of three years, in accordance with the bye-laws and Constitution of the Staff Association. The said election of appellant No. 2 as General Secretary was further confirmed by the Central Committee held at Vrindaban on November 19, 1994, by reason of which M.R. Awasthi, the appellant No. 2 has a legitimate right to represent the Staff Association, appellant No. 1 and about 16,000 workmen / employees of the Circle Management. But the respondent No. 3, the Assistant General Manager (Personnel) of the State Bank of India, Lucknow by his impugned letter dated May 3, 1995, communicated to the General Secretary, the appellant No. 2 herein, that in view of the advise received from the Central Office, the Management shall not negotiate with Shri M.R. Awasthi. appellant No. 2 on any matter of the Union / Association as Shri M.R. Avasthi had already retired from the Bank on January 31, 1995. It is the legality and propriety of this letter which is under challenge herein.

4. The respondents have resisted the appeal and Writ petition by contending that according to the practice followed by the Bank since decades only a serving employee may represent the Union in bilateral discussions with the Bank which practice is recognized by the Staff Federation also. They have taken the stand that on account of the fact that Bank being a credit institution cannot deal with a person who is not regard to be bound by the declaration of secrecy and fidelity by which other

serving employees are bound and also because the Act nowhere lays down that the employer are bound to have negotiations with the Trade Union nor the members of such Unions are entitled to insist upon their presence in negotiations with the Employers. The respondents have taken the plea that though outsiders may be admitted as members of the Trade Unions and its office bearers, but the Act does not restrict the Employer's right or option to have negotiation only with such of the Office bearers who are its serving employees specially in a commercial concern like Banking Industry. The respondents have stated that the Code of Discipline, relied upon by the appellants does not entitle such office bearers to claim any right of representation and negotiation with the Bank. The respondents have taken further stand that M.R. Awasthi, appellant No. 2 having retired from the service of the Bank on January 31, 1995 has no right to negotiate with the Management on behalf of the Union / Staff Association and the Management is within its right and authority to decline to negotiate with him.

5. The application filed by the Staff Federation for intervention has been allowed by us. The Staff Federation has taken the same stand as is taken by the respondents and have supported the respondents in toto, it is stated on behalf of the Staff Federation that it is the central organization of the employees of the State Bank of India and circle level Unions/Associations including the First Petitioner who are affiliated with it, the aims and objects of which are laid down in its Rules and the Constitution. It deals with all policy matters and the decisions of the Staff Federation is absolutely binding on all the affiliates. The Staff Federation has emphatically stated that the accepted policy followed since decades is that none but a serving employee has to represent Federation or Circle Union/Association at all levels in bilateral forums. The Staff Federation has pressed into service past instances for such policy. It is stated that in 1991 when one Mr Charles Coutto, the then General Secretary of Bombay Circle Union had ceased to be an employee, and claimed to represent the Bombay Circle Union in bilateral forums, it was M.R. Awasthi, the appellant No. 2 who was then the President of the Federation as well as the General Secretary of Staff Association Lucknow, who fully endorsed the aforesaid practice of representation by a serving employee only. The Federation, therefore, rejected claim of Charles Coutto in view of the decision as contained in letter dated April 26, 1991 (Annexure-B) to which M.R. Awasthi was a party. The said policy was formalized by Federation by amending its Rules in Council Meeting held on December 23, 1994 under the chairmanship of M.R. Awasthi, appellant No. 2.

6. Having regard to the present circumstances of the case and with a view to forge efficiency in Public Utility Services like Bank and with a view to prevent and remove the employer and the workmen in day to day working of the establishment and to promote measures for securing amity and good relations between them. We proposed the parties to also go into the legality of the election of appellant No. 2. M.R. Awasthi as General Secretary and his continuance as such even after his retirement from service on January

31, 1995 and the parties were required to address on the same besides the legality / propriety of the impugned letter dated May 3, 1995 issued by the respondent No. 3 refusing to negotiate with appellant No. 2 - M.R. Awasthi - as representative of the Union / Staff Association. Consequently, the parties addressed us on the same and have also submitted written submissions.

7. Learned counsel appearing for the appellants vehemently urged that even though appellant No. 2, M.R. Awasthi retired from the service of the respondent Bank on January 31, 1995 on attaining the age of superannuation yet he is entitled to continue as General Secretary of the Staff Association and represent the Union and its members in the negotiations to be held with the Management. He submitted that by virtue of the provisions contained in Section 6 (e) read with the with which the Trade Union is so connected, are also entitled to be admitted as ordinary or temporary members of the Trade Union and, therefore, the respondents cannot deny to negotiate with M.R. Awasthi, the General Secretary of the Staff Association even after this retirement from service of the Bank. He also urged that the scheme contemplated under Section 6 (e) and Section 22 of the Act is identical to the one as contemplated in Section 36 (i) of the Industrial Disputes Act, 1947 under which a member of the executive or office bearer of a registered Trade Union who is not an employee of the industry is also entitled to represent the workman and on that basis it was contended that the impugned letter of May 3, 1995 declining to negotiate with M.R. Awasthi, the General Secretary of the Union is wholly illegal and void. This contention is seriously opposed by the respondents as well as by the Staff Federation. In order to appreciate the rival contentions it would be appropriate to look to the relevant provisions of the Trade Unions Act.

8. Section 6 with its clause (e) of the Act reads thus:-

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) (b) (c) (d).....

(e) the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the admission of the number of honorary or temporary member as (Office bearers) required under Section 22 to form the executive of the Trade Union.

(f), (g), (h), (i),

(j).....

Relevant part of Section 22 reads as under:-

22. Proportion of officers to be connected with the industry:- Not less than one-half of the total number of the (office bearer) of every registered Trade Union shall be persons actually engaged or employed in an industry with which the Trade Union is connected.

It may be noted that Section 6 contemplates two essential requirements. Firstly, the executive of the Trade Union must be constituted in accordance with the provisions of the Act and unless it is so constituted a Trade Union shall not be entitled to the registration under the Act and Secondly, the rules of such a Trade Union should provide for the matters enumerated in clauses (a) to (j) of Section 6. Clause (e) of Section 6 of the Act provides for admission of honorary or temporary members (office bearers) also in accordance with Section 22 of the Act. that being so, the rules of the Trade Union according to clause (e) of Section 6 should provide for the admission of ordinary members who shall be persons actually engaged or employed in the industry with which the Trade Union is connected and also to provide for the admission of number of honorary or temporary members as office bearers as required by Section 22 of the Act with a view to form the executive of the Trade Union. A reading of Section 22 reproduced above would show that it mandates that at least one half of the total number of office bearers of the Trade Union should be persons actually engaged or employed in a industry with which the Trade Union is connected. That means the number of actually employed office bearers should in no case be less than half of the total number of office bearers. The provisions contained in Section 6 and 22 reproduced above relate to the registration of a Trade Union and constitution of the executive of the said Union. The provisions of Sections 6 and 22 indicate that an ordinary or a temporary member may be an office bearer but they no where provide that such a member shall also have a right to negotiate with the management or the management would be under an obligation to negotiate with an office bearer of the Union who is no longer in the employment of the Industry which the Trade Union is connected.

9. Now coming to the contention that the scheme of Section 6 read with 22 of the Act is similar to that of Section 36 of the Industrial Disputes Act 1947 in terms of which a workman is entitled to be represented in any proceedings under the Act by any member of the executive or other office bearers of a registered Trade Union , even though he is no longer in the employment of the Industry, it may be pointed but Section 3 is a complete answer to this submission. It may be seen that Section 3 of the Industrial Disputes Act provides for the constitution of Works Committee consisting of the representatives of the employers and workman engaged in the establishment. It is significant to note that it clearly provides that the representatives of workman the workman engaged in the establishment and in consultation with the Trade Union if any, registered under the Indian Trade Unions Act. 1926. under the Industrial Disputes Act, the Works Committee so constituted is enjoined with the duty to promote measure for securing and preserving amity and good relations between the employer and workman and, to that end, to comment upon the matters of their common interest or concern and endeavor to compose any material difference of opinion in respect of such matters. It, therefore, becomes clear that under the Industrial Disputes Act the representatives of the workman have to be chosen only from amongst the workmen already engaged in the establishment and not an outsider or an ex-workman of the establishment concerned or any other person. It would, therefore, not be correct to contend that having regard to the provisions of Section 36 read with Section 3 of the Industrial Disputes Act an honorary/temporary member of a private individual is entitled to represent the workman in the matters aforesaid. While referring to the provisions of Section 36 of the Industrial Disputes Act, the provisions of Section 3 of the said Act can not be over- looked or ignored. The provisions of the Trade Union Act, 1926 have to be harmonized with the relevant provisions of the Industrial Disputes Act, 1947. It has also to be kept in view that the industrial Disputes Act is a much later Act, which besides other matters, specifically

concentrates on harmonious relations between the employer and workmen, the disputes between the two and settlement thereof by negotiations with the assistance of their respective representatives. It is for all these reasons and as stated in their counter-affidavit by the respondents, that a practice and usage is followed by the respondent-Bank since decades whereby only serving employees represent the Union in bilateral discussions with the Bank and that this practice has been recognized by the Staff Federation also which is a body to coordinate the activities of various Unions/Associations of the employees of the State Bank of India and its associate Banks. This stand of the respondents has been fully supported by the Staff Federation

- intervener.

10. Here it would be advantageous to look into the relevant rules and constitution of the State Bank of India Staff Association. Rules (5), (6) and (9) relate to the membership of the Union while Rule (14) relates to the Management and Officers of the Union the relevant parts of said rules read as under:-

5. None but a permanent employee of the State Bank of India who is not below the age of 18 shall be enrolled as ordinary member of the Association provided, however, a member employee promoted to Supervisory Cadre shall have to apply for retaining his membership in the usual manner.

6. Honorary Member- Persons who are not eligible as members under rule 5 but are in sympathy with the objects and spirits of the Union may be elected Honorary Members at the Triennial or Special Meeting of the General Council/Central Committee/Central Working Committee convened for the purpose. Besides, considering the cases of Honorary Membership directly, the General Council/Central Committee/Central Working Committee shall consider all the individual cases as proposed by the Circle representatives.

9. Ordinary member after retirement from the Bank s service shall not continue to be such members.

(a) None but an Ordinary/Honorary Member of the Association will be eligible to occupy or continue in any post in the Central Committee/Central Working Committee/Circle Committee/Unit Committee. Notwithstanding anything contains elsewhere in these rules, a member of the Central Committee/Central working Committee/Circle Committee/Unit Committee will forthwith cease to be such member if he ceases to be an Ordinary/Honorary Member.

14. The management of the Union shall be vested in the Central Committee which consists of:-

(a) (1), (ii), (iii), (iv), (v),

(vi), (vii), (viii).....

(ix) One General Secretary elected by the Circle General Council for each administrative Circle of the State Bank of India who shall belong to any Branch/Office of the Bank of the Circle for which he is elected and one Dy. General Secretary elected by the Circle General Council for each Zonal Office of the State Bank of India.

(x) etc.....

A cursory look to rule 5 Will make it clear that to become an ordinary member of the Association one has to be a permanent employee of the State Bank of India and at the same time not below the age of 18 years whereas Rule 6 provides that a person who is not a permanent employee of the Bank as contemplated under Rule 5 but has some sympathy with the objects and spirits of the Union he may be elected honorary member at the triennial or special meeting of the General Council etc.....convened for the purpose. Further, according to Rule 9 ordinary members after retirement from the Bank s service shall act continue to be such members while clause (a) of Rule 9 provides that an ordinary/honorary member of the Association will be eligible to occupy or continue in any post in the Central Committee/Central Working Committee/Circle Committee/Unit Committee but such ordinary/honorary member of the aforesaid committees will forthwith cease to be such member if he ceases to be an ordinary/honorary member, notwithstanding contained to the contrary in the Rules.

11. It may be noticed that M.R. Awasthy, appellant No. 2 was an ordinary member of the Staff association within the meaning of Rule 5 of the Staff Association Rules. Being such ordinary member he was elected as General Secretary of the Staff Association in the triennial meeting held on October 16, 1994. Admittedly. M.R. Awasthi retired from the service of the respondent-Bank on January 31, 1995 on attaining the age of superannuation. He was not elected as an honorary or a temporary member in any Special Meeting of the General Council or of the Committees referred to above convened for that purpose any time after his retirement. Consequently, in view of Rule 9 M.R. Awasthi appellant No. 2 cannot legitimately claim his continuance as an ordinary member and General Secretary of the Union after his retirement from the service of the Bank. Clause (a) of Rule 9 further reinforces this position which contemplates that notwithstanding anything contained elsewhere in the Rules, a member of the Central Committee/Central Working Committee/Circle Committee/Unit Committee will forthwith cease to be such member is he ceased to be an ordinary/honorary member. Since M.R. Awasthi ceased to be an ordinary member on his retirement on January 31. 1995 and since he was not elected as honorary member at the triennial or a Special Meeting of the General Council, etc. as contemplated in Rule 6, he neither remained as ordinary member or as honorary member of the Association. He therefore, cannot claim a right to negotiate with the management as a representative of the Union. Even otherwise he cannot claim such a right in view of the provisions contained in clause (ix) of Rule 14 (a) which provide that the General Secretary elected by the Circle General Council for each administrative circle of the said Bank should belong to any Branch/Office of the Bank of the Circle for which he is elected, M.R. Awasthi can be said to belong either to any Branch/Office of the Bank only if he is in the employment of the Bank.

After the retirement he no longer belongs to any Branch/Office of the Bank of the Circle as he would be deemed to have ceased to belong to any Branch/Office of the Bank. In these facts and circumstances no case is made out for any interference in the decision taken by the respondents and conveyed to the appellants through the impugned letter dated May 3, 1995.

12. It may also be appropriate to have a look to the relevant rules of the Federation. Clause (d) of Rule 1 of the said Rules provides that the jurisdiction of the Federation shall extend to the whole of the territory of the Indian Union. Rule 2 lays down the aims and objects of the Federation and according to clause (b) thereof one of the aims and objects is to coordinate the activities of the Union/Associations of the employees of the State Bank of India and its associate Banks within the Indian Union and the Unions outside Indian Union and to initiate policies conducive to the progress and benefit of the affiliated unions/Associations. sub-clause (v) of clause (e) of Rule 2 contemplates that the decision of the Federation in matters of policy shall be absolute and binding on all affiliated Union/Association/Administrative Circle shall have the right to send any person as delegate to any General Body of the Federation who is a serving employee of the Further clause

(g) of Rule 20 of the Federation Rules provides for affiliation to only such Union/Associations of the employees of the State Bank of India and associate Banks which is run, managed and led by serving employees. Similarly Rule 21 lays down that if any of the office-bearer or member of the Federation, council, representing an affiliated Union/Association/Circle, ceases to be a serving employee of the Bank or an office-bearer, etc, shall be deemed to have become vacated. Thus from the aforementioned federation Rules it is distinctly clear that the policy of the Federation by which the appellant No. 1 being its affiliate is also bound permits representation only by a serving employee of the Bank and not by a person who ceases to be an employee of the Bank.

13. The contention that by a resolution passed in the Circle General Council on October 16, 1994 M.R. Awasthi was elected as an honorary member of the Association Rules which resolution was subsequently affirmed / approved in the meeting of the Central Committee on November 19, 1994 does not hold good for two reasons. Firstly, no material has been placed on record to show that there was ant such resolution as alleged having been approved in the meeting of the Central Committee on November 19, 1994, whereby M.R. Avasthy is said to be elected accepted as an honorary member of the Union after his retirement. Secondly, even if it is assumed that there was such a resolution the same was premature and in respect of a non-existing matter which was not obtainable either on October 16, 1994 or on November 19, 1994 as the question of M.R. Awasthi being an honorary member would have arisen only after January 31, 1995 on his retirement provided he was so elected in accordance with Rule 6 of Staff Association Rules.

14. Mr Rajiv Dhawan, learned senior counsel for the intervener supported by the respondents counsel. Mr Harish Salve and other counsel appearing for the respondents submitted that the triennial election of the Staff Association Lucknow Circle had taken place in 1989 and the next election had become due after 3 years term sometimes in 1992 and according to Rule 38 (a) of Staff Association Rules, the triennial meeting of the General Council of the Association should be held within 9 months from the triennial term unless precluded by law. It was submitted that if the meeting is not held within 9 months from the triennial term it can be so held only with the approval

of Registrar of Trade Unions and since the triennial meeting dated October 16, 1994 in which M.R. Awasthi was elected as General Secretary was held without such approval of the Registrar, it was unauthorized and election was invalid. the relevant part of Rule 38 (a) reads thus:-

Triennial Meeting of the General Council-The Triennial Meeting of the General Council of the Association shall be held within 9 months from the triennial term unless precluded by law, any extension of time beyond 9 months will require specific approval of the Registrar of Trade Unions.

Further Rule 42 of the Staff Association Rules relates to the triennial meeting of the Circle General Council for the purposes of transacting the business mentioned in various clauses of the said rule. Clause (iii) of Rule 42 relates to election of office bearers of the Circle Committee and delegates of the Triennial General Council of the Association. The relevant part of Rule 42 reads as under:-

42. Triennial Meeting of the Circle General Council- The Triennial Meeting of the Circle General Council shall be held within 6 months from the close of the Triennial term unless precluded by law, any extension of time beyond 6 months will require approval of the Central Committee/Central Working Committee of the Association.

15. Admittedly, the triennial election of the Staff Association. Lucknow Circle became due in 1992. The triennial meeting of the Circle was however, called on October 16, 1994 in which M.R. Awasthy, appellant No. 2 is said to have been elected as General Secretary when he was in the service of the Bank. Admittedly the said triennial meeting was called much after the prescribed period of 9 months as contained in Rule 32(a) and admittedly no approval of the Registrar of the Trade Union was obtained for calling the said meeting on October 16, 1994. The said meeting, therefore, cannot be held to be valid meeting in respect of the matters transacted in the said meeting. As M.R. Awasthy, appellant No. 2 is said to have been elected as General Secretary in the said triennial meeting of the Council it cannot be said to be a valid election. Again as provided in Rule 42 of the Staff Association Rules, the triennial meeting of the Circle General Council has to be held within 6 months from close of Triennial term, unless precluded by law and extension of time requires approval of the Central Committee for election of office-bearers of the Circle Committee, but no such approval of the Central Committee has been placed on record. The election of appellant No. 2 as General Secretary will be bad on this account also for this reason also, therefore, the petition as well as the appeal would fail.

16. It may be further noticed that some members of the Staff Association, Lucknow Circle had filed a Writ Petition under Article 226 of the Constitution of India before the High Court of Allahabad which was disposed of by an order dated December 5, 1994 with a direction to the Registrar of the Trade Unions, West Bengal to dispose of the representation of those petitioners to the said writ petition within a period of six weeks. Consequently the Registrar took up the matter and after hearing all concerned including the appellants herein, recorded the finding that the triennial meeting held on October 16, 1994 was without obtaining prior approval of the Registrar in accordance with the said rules. Having gone through the facts and circumstances of the present case and Rule 38 and 42 of the Staff Association Rules we are also of the view that the triennial meeting

held on October 16, 1994 in which M.R. Awasthy, appellant No. 2 was elected as General Secretary was not a valid meeting. In view of the facts and circumstances stated above it is not now necessary for us to go into the question whether the second writ petition filed by the appellants before the High Court was maintainable or not.

17. For the reasons stated above, the appeal s well as the petition fail and are hereby dismissed but without any order as to costs.