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*Editorial*

## AUTUMN THUNDER

**T**he days of festivity are fast approaching. By the time we reach our readers with this issue, the drums will start beating for the Navaratri, Durga Puja, Dussehra and setting the tone for month-long festivity, culminating in observance of Diwali. This will be followed by the harvesting season and all the festivity that follows. Like last year, we are ushering in the festive occasion as the country is recovering from the aftermath of the deadly second wave of the pandemic. The grotesque visuals of human bodies floating in Ganges, mass funeral pyres, people dying on streets will be embedded in our memories for a lifetime. We only hope that the spirit of festivity will sweep aside the evils of the expected third wave, and collectively we can commence our forward movement in the neo-normal times to reclaim and reconstruct whatever we have lost during the last two years of the pandemic.

Pandemic and social upheaval that we are passing through is also necessary to recollect the dreams and aspirations of many of the doyens of the movements who are no longer with us. Let us never forget the sacrifice of the leaders who were instrumental in building the edifice of a resilient, democratic, and secular India. We can never afford to ignore the sacrifice of the freedom fighters who have laid down their lives to liberate the country from an alien power. They have never ever pondered what could possibly be the consequences; instead, they had plunged into a struggle for the emancipation of Indians from British rule. This is also true and

equally applicable for our Confederation and the movement. The time of festivity is also a time of serious introspection to rebuild and re-establish that glory of our collective life so beautifully encapsulated in five letters: A I B O C.

Decades ago, in a brilliant speech, Franklin D. Roosevelt had observed, "The liberty of a democracy is not safe if the people tolerated the growth of private power to a point where it becomes stronger than the democratic state itself. That in its essence is fascism: ownership of government by an individual, by a group, or any controlling private power." It bears a striking resemblance to the state of affairs in our country today. Festivity comes with the departure of monsoon clouds. However, for the public sector, ominous dark clouds are gathering in the none too distant horizon, which could spell out doomsday for the public sector and the Indian economy as a whole.

It is time when we focus on the positive spirit of festivity to launch an appropriate counter to the offensive of privatisation. This requires a reorientation of our thought process. We have to approach all stakeholders and bring them on board to build a massive united front of the citizenry. The festive season invariably gives us an opportunity in meeting people, renewing familial relationships, and participating in social gatherings. Let us utilize all such opportunities to spread the message that privatisation of banks and the National Monetisation Pipeline is inimical to national interest and has to be resisted by all.

**A JUG FILLS DROP BY DROP**

We can draw inspiration and comfort from the year-long struggle by the farmers in the Singhu border separating Haryana from the national capital region. They have braved the furies of nature, state oppression, etc. Hundreds have laid down their lives during the entire span of the agitation. We salute their grit and gumption in the face of all adversities, and the brutal administrative powers unleashed to quell the movement. The farmers from the states of Punjab, Haryana, and Western Uttar Pradesh have rightly realised the potential threat that the three contentious bills carry. They firmly believe that the crony corporates are being favoured, which makes their farming activities un-remunerative and may throw them out of their occupation. This perceived threat has made them the frontline warriors to protect their livelihood.

The proposed move to privatise banks is more sinister. We have shared many articles pinpointing this issue. The issue has also been discussed at length in members' meet, in demonstrations, group discussions. But we would like to revisit the spectrum and present the organizational viewpoint in a nutshell. State ownership of banking implies an unwritten sovereign guarantee to depositors who have invested their lifetime savings with public sector and regional rural banks. If deposits are the lifeline, advances provide the much-needed nutrients to the banking system for its survival. It is common knowledge that the market for meaningful qualitative lending has to be created. Targeted lending by public sector banks has created this market. India is considered a growing and potential market for consumers whose purchasing power has been injected by the banks by its lending to various segments of the priority sector, including retail and agriculture. The story of the country could have been entirely different had this enormous purchasing power not being created out of targeted bank lending. Another story is that these efforts were partially derailed by misusing the banking sector by the crony capitalists who themselves are the product of

such misdirected reform protocol. The same logic applies to the entire public sector with slight variations in its content.

The days of festivity have to be used to spread this message. A trade union activist needs to utilize all available opportunities to further the cause to justify the existence of his organization. Festival spreads the message of the victory of the virtuous over the evil forces. This festival season demands that the evil forces of privatisation be given a sendoff on Dussehra day as we celebrate the mythological victory of Lord Rama, the triumph of good over evil.

A social media campaign "# Bank Bachao Desh Bachao" is on. Common Bond appeals to all its readers, well-wishers, and their families to like this page on Facebook and share it with their friends, ensuring that they like it and expand the chain of its regular viewers. The central office of AIBOC is uploading necessary propaganda material at 8.00 a.m. and 5.00 p.m. every day. We have to convert it into a people's movement as the fight against privatisation is not a constricted fight of the bank employees only but is expansive combat to uphold the economic sovereignty of the country, which can only ensure political freedom. This would also be our best tribute to the freedom fighters who laid down their lives to attain their dreams of a self-reliant, independent India. What else would be a more virtuous time than the festive days to pay our obeisance?

We again extend our warm festive greetings to all our readers, well-wishers, members of AIBOC, and the entire banking fraternity. Do enjoy the festivities, re-invigorate yourselves and join the ongoing struggle with renewed zeal and determination. We also extend our wishes for Bijoya Dashami and Dussehra. Stay safe, stay healthy.

**#BankBachaoDeshBachao**

*IN THE SKY THERE IS NO DISTINCTION OF EAST AND WEST*

We share an article by Shri SKalyanasundaram, a retired banker which provides a valuable insight on the functioning of Govt. owned banks which not only provide a tremendous comfort level to depositors but also render services at an affordable cost.

"It has been reported that while addressing the NCAER-organised India Policy Forum 2021, the Finance Secretary, TV Somanathan, said that the government continues to work on its stated position that most of the public sector banks will be eventually privatised."

"Banking will be one of the sectors where a bare minimum of the public sector will remain. This is the government's stated policy", he said. In fact, he was responding to a suggestion by Montek Singh Ahluwalia that the government must now focus on getting the banking sector reforms done. Ahluwalia was a key member of the erstwhile Congress-led UPA government. He said that the difficult part of putting the public sector banking system competitively on a par with the private sector banking system was not done as yet.

This is quite contrary to what the Finance Minister said sometime in March this year.

When the bank employees were striking work, objecting to her proposal to privatise two banks, she said that not all banks are going to be privatised, adding that the interests of the employees will be taken care of. She further clarified as follows: "We have announced a Public Enterprise Policy, where we have identified four areas where public sector presence will be there, in this, the financial sector too is there. Not all banks are going to be privatised," she said.

The path suggested by the government seems to be a dangerous one. Privatising banks, due to various reasons, is quite disastrous. One fails to understand the need for such an approach at the present

juncture. Already we have substantial presence of new generation private sector banks which are giving enough competition to the government banks. The major problem faced by banks is on account of non-performing assets, which is common for both the private and public sector banks.

The government may also have difficulty in providing additional capital to the government banks on account of fiscal constraints, and the banks are in need of additional capital to maintain Capital Adequacy Ratio for continuing their lending operations. But getting rid of public sector banks on account of such problems is akin to throwing the baby out with the bathwater.

Banking is not like any other business entity. Banks operate with a small portion of shareholders' funds with a disproportionately higher outlay of the common man's deposit. Banks basically lend depositors' money.

Any failure of banks will have a tremendous contagion effect and will derail the economy. We should not forget the historical factors that had led to bank nationalisation in 1969.

After the formation of the Reserve Bank of India in 1935, up to the period of our getting Independence (1947), there were 900 bank failures in our country. From 1947 to 1969, 665 banks failed. The depositors of all these banks lost their deposited money. Even after 1969, 36 banks failed, but these were rescued by merging them with other government banks. This included even bigger banks like Global Trust Bank. Recently, we have seen the failure of the old generation Lakshmi Vilas Bank and new generation YES Bank.

The 1,926 town cooperative banks in 2004 have shrunk to 1,551 in 2018, as per an RBI report. Banks owned by the sovereign government provides a tremendous comfort level to depositors. In his subconscious mind, the common man feels that a

*THERE HAS TO BE EVIL SO THAT GOOD CAN PROVE ITS PURITY ABOVE IT*

government bank cannot fail and his money is safe. Attempting to privatise all banks is simply undermining the tremendous contribution of these banks to the country over the years. The nationalisation of private banks in 1969 resulted in the opening of tens of thousands of branches in remote corners of the country. Job opportunities were created for a large section of educated youth. Banks were used to bringing about a revolution in agriculture and to carry out activities related to it. Bank loans were available to the weaker sections and small entrepreneurs. Banks have become an excellent tool for the economic progress of the country.

Forty-two crore ordinary people have opened bank accounts as a result of the immense contribution of

state-owned banks in opening the Prime Minister Jan Dhan Yojana account, a recent government initiative.

There are also private banks in the current system. But they often operate for profit only. But state-owned banks, while trying to be profitable on the one hand, provide many services in the public interest. Only government banks provide services to the common people at affordable costs.

Privatising all of them will be disastrous. The government must find ways and means to strengthen the banking system and ensure the safety of depositors' money and forbid looting of public money by private tycoons.

Public deposits must be well protected and not allowed to be plundered by anyone. ■

AIBOC PRESS RELEASE Dated 17.09.2021

## BAD BANK (NARCL) UNLIKELY TO RESOLVE INDIA'S BAD LOANS CRISIS, SAYS AIBOC

All India Bank Officers' Confederation (AIBOC), the apex organisation of supervisory officers in the banking industry, does not consider the formation of the National Asset Reconstruction Company (NARCL) or the 'bad bank' as an adequate step to mitigate India's bad loans crisis, which has assumed very serious proportions.

Following the Union Cabinet's approval, the Hon'ble Finance Minister has announced yesterday that the Government will guarantee security receipts issued by the NARCL to the tune of Rs. 30600 crore. As per the government's projection, the NARCL will acquire non-performing assets (NPAs) totalling Rs. 2 lakh crore from the banks against a payment of 15% as cash and the rest in security receipts.

The government guarantee, valid for 5 years, is meant to meet the shortfall between the amount that will actually be recovered from the acquired NPAs and the face value of security receipts issued for those NPAs by the NARCL. The Government expects the public sector asset reconstruction company, NARCL, along with the asset management company, India Debt Resolution Company Ltd. (IDRCL), to improve

NPA recovery and lead to a resolution of the bad loans crisis.

The record of the present government in addressing the problem of burgeoning NPAs, particularly in the public sector banks, does not evoke much confidence. While the Insolvency and Bankruptcy Code was set up with much fanfare in December 2016, actual recovery of NPAs through the IBC mechanism so far has been grossly inadequate. Data disclosed by the Insolvency and Bankruptcy Board of India shows that till June 2021, in 396 resolved cases with admitted claims amounting to Rs. 6.82 lakh crore, recovery was only around Rs. 2.45 lakh crore, i.e. 36% of total claims. The recovery rate has fallen to 25% in April-June 2021 quarter, implying massive haircuts being inflicted on the creditors.

Hon'ble Finance Minister claimed yesterday that over Rs. 5 lakh crore worth of NPAs have been recovered by the banks in the last six years. What she has failed to mention is that NPAs worth Rs. 10 lakh crore have also been written off by the banks from 2015-16 to 2020-21, as per RBI data. While legacy NPAs from big ticket loans extended before 2014, which were

OVERCOME ANGER BY LOVE, EVIL BY GOOD

revealed through the Asset Quality Review in 2015, form a substantial part of the bad loans problem, fresh slippages in NPAs have remained significant even under the present regime.

Moreover, NPA reduction under the present government has occurred more through write-offs than actual recoveries, which have caused massive losses for the public sector banks (PSBs) in the past six years. The recapitalisation of PSBs by the union government to the tune of Rs. 3.36 lakh crore in the last six years has actually acted as bail-outs for delinquent corporate debtors and defaulters.

The stock of NPAs for the scheduled commercial banks stood at around Rs. 8.7 lakh crore in March 2021; 78% of these NPAs were unpaid loans by large borrowers and around 75% of the NPAs were with the PSBs. The NARCL taking Rs. 2 lakh crore worth of NPAs away from the banks may make their balance sheets look better in the short-term but if actual NPA recoveries fail to improve, the bad loans

problem will persist. The PSBs as well as the central exchequer will have to bear the burden imposed by corporate loan defaults and crony capitalism will continue to flourish.

AIBOC is of the considered view that in order to plug this drain of resources from the banks and the public exchequer to the crony capitalist defaulters, the need of the hour is an overhaul of the legal regime with regard to debt recovery and bankruptcy, facilitating speedy acquisition and auction of the defaulters' assets by the public sector banks and/or the government. The government clearly lacks the political will to initiate reforms in this direction.

AIBOC feels that unless these legal and judicial reforms are put in place, the extent to which the NARCL will succeed in expediting actual NPA recovery will remain limited.

**Sd/-**  
**(Soumya Datta)**  
**General Secretary**

**AIBOC PRESS RELEASE Dated 22.09.2021**

**AIBOC EXTENDS FRATERNAL SUPPORT TO THE BHARAT BANDH CALLED BY SAMYUKTA KISAN MORCHA ON 27TH SEPTEMBER, 2021**

All India Bank Officers' Confederation (AIBOC), the apex trade union in the banking industry, extends its fraternal support for the Bharat Bandh called by the platform of farmers' organisations, Samyukta Kisan Morcha, on 27th September 2021. AIBOC calls upon the Union Government to rescind the three farm laws passed in parliament in the most undemocratic manner in September 2020, which have agitated farmers across the country and also to meet the other demands raised by the Samyukta Kisan Morcha regarding (i) guaranteeing fair prices for crops; (ii) reducing prices of diesel, fertilisers, electricity, and other farm inputs; (iii) rescinding the Electricity (Amendment) Bill and new Labour Codes & (iv) curbing steep price rise and inflation.

The findings of the NSS' Land and Livestock Holdings of Households and Situation Assessment of Agricultural Households, 2018-19 released earlier

this month, has portrayed how the government's target of "doubling farmers' income by 2022" has no chance of getting fructified. Rather, the average outstanding loan per agricultural household has increased to Rs 74121 in 2018 from Rs 47000 in 2013. It is common knowledge that the growing indebtedness of agricultural households reflects a sign of agricultural distress. Against this backdrop, allowing large corporate groups a free hand in agricultural production and marketing, weakening public procurement, and diluting regulations on the storage of essential commodities is bound to impact the farmers adversely.

The farmers form a substantial customer base of the public sector banks, the regional rural banks, co-operative banks, and old generation private banks. They are major stakeholders of India's banking system. Credit flow to agriculture and farmers will get adversely affected if the public sector banks are privatised, as

**THREE THINGS CANNOT BE LONG HIDDEN: THE SUN, THE MOON AND THE TRUTH**

**Common Bond, October -2021**

announced by the Union Government. The private sector banks have not shown much interest in expanding rural branches and lending to agriculture. AIBOC also urges the Samyukta Kisan Morcha to voice their opposition against privatisation of the public sector banks and other financial institutions to safeguard the interests of the farmers.

AIBOC urges upon the government to re-open

dialogue with the Samyukta Kisan Morcha on their demands and rescind the anti-farmer Farm Laws of 2020. AIBOC affiliates and state units will join in solidarity with the protest actions of the farmers all over the country on 27th September 2021.

**Sd/-**  
**(Soumya Datta)**  
**General Secretary**

*Economy*

## **NATIONAL MONETISATION PIPELINE (NMP) – A PSEUDONYM FOR PRIVATISATION**

The editorial team of Common Bond is sharing its perception on NMP touching the contour of privatisation theme of the Government of India with the hope that it will be handy for our agitators in the street.

A lesson that you should not lie is taught to kids in their early years. Unfortunately, what is kept under the carpet is that the grown-up can resort to lies depending on the gravity. National Monetisation Pipeline is one such issue. This scheme was floated with the idea of monetizing the vast assets under the control of the state and public sector undertakings with the pious motive of utilizing the proceeds for national welfare. Unfortunately, this is a classic example, which we would like to examine in the following, of state power resorting to lies in the face of a grave economic crisis looming over its head.

We are constrained to observe that both GDP and the policy prescription for reversing the falling GDP are going southwards, reflecting the lack of the thinking process. The decision to let out roads, railway stations, power transmission lines, etc., etc., is a synonym for letting houses or warehouses ensuring a monthly income to cover the household deficit. A private owner is allowed to maintain a national highway under NMP. He would collect toll, keep the highway and hand it over to the government after 30 years. This is projected as a win-win situation for the government and the national economy. However, it is calculated that the government could at best turn four to five thousand crore of rupees per year on the reserve price of one lakh fifty thousand crore to be earned over thirty years as claimed by

the Union Finance Minister. It is not clear who would take care of the maintenance of the property? Our everyday experience suggests that in rear cases, the lessee undertakes proper maintenance of the leased property. It may well happen that thirty years hence, the restoration cost would be more than the rental income the government would earn through NMP. We may reasonably anticipate that the government has to bow down to the regular clamouring for an increase in toll rate and other consequential costs, in the face of the pressure created by the private operators. A classic example is the demand to reverse the privatisation of the British railway and the leasing of its vast network.

It is also essential to dissect the background which has forced the government to mobilise such enormous resources for the national exchequer. The crisis has its origin in the decision of demonetisation taken in 2016. This was followed by a hasty introduction of a GST Scheme and problems created by nationwide lockdown post the spread of the Covid pandemic. This triplet of demonetisation, GST, and the lockdown has left an indelible scar in government finance. It is estimated that the ratio of government borrowing to GDP will stand at 60 percent at the end of the financial year 2020-21 as compared to 48.6 percent at the end of the previous financial year. Trends of the current year indicate that the ratio may climb to 62 percent at the end of the current financial year 2021-22. There is no doubt that leasing out of national assets and the sale of public sector undertakings is an easy option left to the government to bridge the ever-growing gap in fiscal management.

**BETTER THAN A HUNDRED YEARS OF IDLENESS IS ONE DAY SPENT IN DETERMINATION**

There is no clear indication in the announcement of the Union Finance Minister about the likely impact of the policies of monetisation and privatisation on the life of ordinary people. We have to understand clearly that the assets up for monetisation or privatisation are built or created out of taxpayers' money. Naturally, the people at large have a say either on using or managing such resources, at least theoretically. Those resources are handled either by the government or government undertakings on behalf of the citizenry. Earning profit is not their prime motive. The people won't have to spend much to use the services provided by them. There may be some issues with the efficiency in delivering the services. But the penetration of such service providers must be so deep-rooted that it has ultimately helped create a market for such products to which the private players are now jumping as predators.

Private sectors are guided by profit maximisation and less driven by a commitment to social development. There is nothing wrong with it. But the state has to ensure that post handing over of the assets; the new controller has to keep user charges at a customer-friendly level. The privatisation of the electricity distribution system in India may be cited. In Delhi, the electricity distribution system was privatised, and the users had to pay an exorbitant rate for their electricity consumption and ensuring a decent return to the service provider. The government was changed, with rising electric costs being one of the main electoral issues. The next government, which is still in power in Delhi, arranged to subsidise the electric bill. In reality, this subsidy amount is coming from the tax paid by the customers. So, in other words, the subsidy amount is replaced by a refund of a part of the extra tax revenue generated without disturbing the finances of the distribution company. This is all about so-called privatisation.

We can cite a very recent example from Bengal. A person met with a road accident and had to be hospitalised. His medical bill was over rupees ten lakh, and he was advised to amputate his leg in the corporate hospital, a poster boy of health privatisation. He was taken to CMC, Vellore. He was there for nineteen days. He could now walk with the help of a crutch and was advised that it

would be all okay within the next three-four months. The treatment cost was around rupees 1.5 lakh. The Association of Private Hospitals in Kolkata that CMC, Vellore, is being run on some other principle than the private health establishment's principle. We are thrilled to learn that even the health care system has different standards.

Two pertinent questions we need to answer. Is there an alternative mechanism available to bridge the current fiscal deficit of the government, along with the question of whether the private sector is efficient? In India, the tax to GDP ratio is 17.4 percent, much lower than in most developed countries. The government can increase its revenue by making all the eligible taxpayers pay their taxes correctly and bring more people within the tax net, disregarding the political outfall of such a move. We can take a small example. The Government of India has published the data about the annual profit and tax burden of Indian corporates from 2005-06. The data suggests that 40 percent of the corporate didn't earn any profit in 2005-06. In 2018-19 51 percent of the corporate reported that they didn't earn profit.

On the other hand 2005-06, 55 percent of the corporates informed that their annual profit was rupees one crore or less. Even in 2018-19, the percentage was 43. We do think that the story has remained unchanged. They are all taking advantage of the loopholes in the accounting system and the ambiguity of tax laws.

Similarly, if nearly 50 percent of the units in the private sector could not earn a profit, does it speak highly about their efficiency? In 2018-19 when 43 percent of the corporates are running at a loss, the percentage was 33 percent for the public sector. Can we conclude that the private sector is essentially more efficient? Will monetisation and privatisation is the real answer?

We need to combat the lies. We have to apply our early lessons that uttering lies is disastrous. The utterance of the lie by the power that be is disastrous not only for the economy but for the nation also.

# SavePublicSectorSaveTheNation  
# BankBachaoDeshBachao

**YOU WILL NOT BE PUNISHED FOR YOUR ANGER, YOU WILL BE PUNISHED BY YOUR ANGER**

## CIRCULARS

62 dated 25th August, 2021: Text of UFBU Circular No. 2021/12 dated 25.08.2021, on Government clearing improvement in Family Pension and Management's Contribution under NPS as agreed in our Wage Revision Agreement.

63 dated 26th August, 2021: Circular on text of the Press Release dated 26.08.2021 denouncing National Monetisation Pipeline (NMP).

64 dated 27th August, 2021: Text of UFBU Circular No. 2021/13 dated 26.08.2021 on UFBU meeting held at Mumbai on 25-8-2021.

65 dated 08th September, 2021: Text of UFBU Circular No. 2021/14 dated 07.09.2021 on United Forum of CSB Unions on struggle path demanding implementation of wage revision as done in all Banks - Call for 3 days' Strike on 29th, 30th Sept. & 1st Oct. 2021 by them - Extending all-out support to their agitation and strike.

66 dated 10th September, 2021: Text of UFBU Circular No. 2021/15 dated 09.09.2021 on our campaign and opposition to privatisation of banks.

67 dated 17th September, 2021: AIBOC issues press statement on formation of NARCL (BAD BANK).

68 dated 21st September, 2021: Text of UFBU Letter No. 2021/14 dated 20.09.2021 addressed to Shri Brajeshwar Sharma, Sr. Advisor-HR&IR, Indian Banks' Association, Mumbai regarding renewal of Group Medical Insurance Policy for 2021-22.

69 dated 21st September, 2021: Text of AIBOC Letter No. AIBOC/2021/27 dated 21.09.2021 written to MD & CEO, CSB BANK LTD., on HR issues

70 dated 22nd September, 2021: Text of Press Release dated 22.09.2021 by AIBOC extending fraternal support to the Bharat Bandh called by Samyukta Kisan Morcha on 27th September, 2021.

## JUDICIAL VERDICT

2021 LLR 546  
MADRAS HIGH COURT  
Hon'ble Mr. C.V. Karthikeyan, J.  
C.R.P.(NPD) No.588/2021 in C.M.P. No. 5072/2021  
Dt/- 17-04-2021  
Sri A. Soundararsan and Another  
Vs.  
The Chennai Metro Rail Limited

**A. JURISDICTION** – Civil Court – Industrial / Trade Dispute – Respondent filed a civil suit seeking permanent injunction restraining petitioners from interfering with peaceful functioning of respondents – Petitioners moved an application opposing the suit on the ground that suit was barred under Section 18 of the Trade Unions Act, 1926 – Contention of respondent was that petitioners were not employees of respondents – Held, petitioners had issued notice of strike to respondents – Conciliation proceedings were participated by both parties – In view of Section 2(g) of the Trade Unions Act, 1926, such dispute can also be raised by any person whether or not in the employment of the employer – Trade Dispute means a dispute between the employers and the workmen in respect of employment or condition of labour – Once a trade dispute had been raised, a Civil Suit is barred under Trade Unions Act – Settled position of law is that in industrial dispute Civil Court have no jurisdiction even

*THE FOOL WHO KNOWS HE IS A FOOL IS MUCH WISER THAN THE FOOL WHO THINKS HE IS WISE*



to grant a decree of in-junction to prevent the threatened injury – Hence, civil suit is not sustainable Petition is allowed accordingly.

**B. INJUNCTION** – Scope of grant – Held, though while granting injunction, the Court have to examine the averments in the plaint and supporting documents but when the plaint itself is barred by any Special Law, the fact which the plaintiff has suppressed, has to be examined – Respondent participated in conciliation proceedings but suppressed this fact in the plaint – Plaint also suffers on such a ground – Hence, suit is not sustainable.

### IMPORTANT POINTS

**\* A civil suit, filed against Trade Union or Workmen is barred under Section 18 of the Trade Unions Act, 1926.**

**\* As per Section 2(g) of the Trade Unions Act, 1926, the office bearers of the Union, even not being employees of the concerned employer, may raise an industrial / trade dispute on behalf of the workmen, members of the Union, against the concerned employer / establishment.**

**\* A dispute, raised with respect to employment or condition of labour, wherein the parties have already moved before the Conciliation Officer, is covered under the ambit of 'industrial dispute' under Industrial Disputes Act, 1947.**

**\* The Civil Court have no jurisdiction even to grant a decree of injunction to prevent the threatened injury.**

**\* Though while granting injunction, the Court have to examine the averments in the plaint and supporting documents but when the plaint itself is barred by any special law, the fact which the plaintiff has suppressed and the defendant has pointed out, has to be examined.**

**\* A plaint is liable to be rejected when it is proved that the plaintiff has suppressed any material fact which was in his knowledge.**

### ORDER

The Revision Petitioners are the defendants in O.S.No. 1394 of 2019. The suit is now pending on the file of the II Assistant City Civil Court, Chennai. Questioning the order dated 03.01.2020 in I.A.No.03 of 2019, the Civil Revision Petition has been filed by the present defendants in the suit.

2. The Suit in O.S.No. 1394 of 2019 had been filed by the Chennai Metro Rail Limited, a Company registered under Companies Act 1956 and represented by its DRO/Legal Officer against A. Soundararasan, President, CMRL Employees Union and R. Elangovan, Vice President, CMRL Employees Union, seeking a judgment and decree in the nature of permanent injunction restraining the defendants from interfering with the plaintiff's peaceful functioning and administration of the Chennai Metro Rail Limited by circulating unwarranted communications to the service providers of the CMRL and also for the costs of the suit.

3. The present petitioner herein had filed I.A. No. 3 of 2019 under Order VII Rule 11 (d) of CPC, 1908, seeking to reject the plaint, claiming it was barred by law particularly under Section 18 of the Trade Unions Act, 1926.

4. The plaintiff stated that along with other projects envisaged by them, they also envisaged the creation of two corridors under Phase I. First corridor started from Washermenpet and ended at Airport for a length of 23.01 km and the corridor II started from Chennai Central and ended at St. Thomas Mount for a length of 22.0 km. The project started in the year 2009 and was completed during February - March, 2018. It was also opened for public service in the month of February 2018. It was further stated that the first and the second defendants are said to be the President and Vice-President of CMRL Employees Union and they are not employees of CMRL. It was stated that the first and the second defendants along with the employees of CMRL had formed a Union in the name of CMRL Employees Union but the same was not recognized by CMRL.

*EVERY HUMAN BEING IS THE AUTHOR OF HIS OWN HEALTH OR DISEASE*

The defendants had submitted representations to the CMRL regarding the formation of the said union.

5. The plaintiff further claimed that the office bearers of the defendants herein have violated the law and acted in an arbitrary and unilateral manner against the interest of the plaintiff's company. The plaintiff further claimed that in the month of February 2018, the CMRL Employees Union circulated certain pamphlets to the public causing allegations against the administration of CMRL by threatening the commuters, that the travel through Metro Rail itself was an unsafe travel and claimed that thereby the defendants created panic in the minds of the commuters. The defendants had also alleged that the functioning of the metro rail was on loss.

6. Thereafter, the plaintiff also stated that on 21.11.2018, the defendants herein had sent a communication to M/s. BVG India Limited and M/s. Karnataka Commercial and Industrial Corporations Pvt. Ltd., who are the contractors of CMRL engaged for Station Management Services like cleaning and issuing tickets on behalf of CMRL. The said contractors had also intended to agree to a letter of acceptance of CMRL for providing the service of Station Controller/Station incharge.

7. It is claimed by the plaintiff that the communication dated 21.11.2018 furnishing wrong information had been forwarded by the defendants alone with a judicial order pronounced in W.P. Nos. 31491, 31492 and 31550 of 2016 claiming that M/s. BVG India Ltd., and M/s. Karnataka Commercial and Industrial Corporations Pvt. Ltd., have been restrained from taking up work relating to proposed new Station Controller Assignments with CMRL and the said communication was forwarded on 29.11.2018. The said communication had created panic on the minds of the Contractors and their staff. It is stated that the plaintiff had approached the Hon'ble Supreme Court by way of a Special Leave Petition (Civil) No.23212 of 2018 and the Hon'ble Supreme Court had stayed the order of this Court in W.P. Nos. 31491, 31492 and 31550 of 2016. It had been stated that the said order of stay had been deliberately suppressed by the defendants herein. It was claimed that the defendants have no right to interfere with the functioning and administration of the CMRL and

in these circumstances, the suit had been filed seeking permanent injunction restraining the defendants from interfering with the plaintiff's peaceful functioning and administration of the Chennai Metro Rail Limited by circulating unwarranted public notices and issuing unwarranted communications to the service providers of the CMRL. Along with the plaint, the plaintiff also filed 6 documents which are as follows:-

- 1) Certificate of Incorporation in the year 2007 to 2008.
- 2) Letter dated 01.10.2018 submitted by the Defendants Union.
- 3) Pamphlet Circulated by the Defendants to the Public.
- 4) Letter dated 21.11.2018 submitted by the defendants to M/s. KCIC India Private Limited.
- 5) Letter dated 29.11.2018 submitted by the defendants to M/s. KCIC India Private Limited.
- 6) Copy of the Affidavit and order in the Special Leave Petition dated 26.07.2018.

8. The plaint is now sought to be rejected under Order 7, Rule 11(d) of CPC by the defendants herein. In the affidavit filed in support of the petition certain facts have been stated. It may not be proper to examine the contents while determining an application under Order VII, Rule 11 (d) of CPC.

9. The plaintiff had stated that two letters were in sent during November 2018 by the defendants to their service providers. It is alleged by the plaintiff that the defendants also circulated pamphlets to the general public. It must also be pointed out that the plaintiff had filed a Special Leave Petition before the Hon'ble Supreme Court in July 2018, much earlier to the said Pamphlets/letters said to have been circulated by the defendants. Therefore, the cause of action for institution of the present suit had arisen after the circulation of the pamphlets/letters by the defendants to the general public and to the service contractors. In the cause of action paragraph, the plaint had also

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stated about the said Pamphlets and letters. The suit was filed only in March 2019.

10. In the averments made in the affidavit filed in support of the application to reject the plaint, it is stated that the plaint should be rejected as barred under law particularly under Section 18 of the Trade Unions Act 1926.

11. To trace the sequence of events, the dates and events will have to be examined. The defendants claimed that the plaintiff had deliberately suppressed material facts before this Court.

12. The defendants herein had issued a notice of strike dated 24.01.2019 under Section 22(1) of the Industrial Disputes Act, 1947 and communicated a copy to the plaintiffs herein. After this notice on 08.02.2019, the Assistant Commissioner of Labour-2 had issued a notice of conciliation and this particular notice had also been addressed to the plaintiff herein. There was a further notice issued by the Assistant Commissioner of Labour -2 on 12.02.2019 and another notice was issued on the very same day. These notices clearly indicate that the scope of dispute between the parties had moved away from the date of issuing pamphlet/ communication to the commuters/service providers. Conciliation proceedings had been initiated. The plaintiff had participated. The defendants also participated. These facts had not been stated in the plaint.

13. The learned counsel for the plaintiff drew the attention of this Court to Section 2(g) of the Trade Unions Act 1926, which is extracted here under:-

“2(g) “trade dispute” means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person, and “workmen” means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises, and”

It is pointed out that there must be dispute between the employers and workmen.

14. It was pointed out by Mr. C. Sankar, learned counsel for the plaintiff that the defendants particularly the President and the Vice President are not employees of the CMRL. But it is acknowledged that they are Office Bearers of the Union. It is acknowledged that the members of the Union are the employees of CMRL. The issue whether the defendants namely A. Soundararasan and R. Elangovan can represent the Union is out of scope of purview of the discussions here under.

15. As per Section 18 of the Trade Unions Act, 1926, no suit is maintainable in a Civil Court as against a registered Trade Union or Officer Bearers or Members thereof with respect to any act done in contemplation or furtherance of a trade dispute and as per Section 2(g) Trade Dispute means a dispute between the employers and the workmen. The dispute which is raised is with respect to the employment or condition of labour. The definition also states that such dispute can also be raised by any person whether or not in the employment of the employer with whom the trade dispute alone.

16. On examining the plaint, the omission to mention about the proceedings before the Conciliation Officer, stares on the face of the plaintiff. Subsequent to the issuance of pamphlets/letters and prior to the institution of the suit, the parties have moved before the Conciliation Officer, who had also advised them not to take any coercive action as against each other. Once a trade dispute had been raised by the parties, then a Civil Suit is barred under Section 18 of the Trade Unions Act, 1926.

17. In (1976) 1 SCC 496, the Premier Automobiles Limited vs Kamlekar Shantaram Wadke of Bombay and others, in paragraph No. 9 with respect to a dispute under the Industrial Dispute Act, 1947, it had been held as follows:-

“9.....The Civil Court will have no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain right or liability created only under the Act. In that event civil Court will have no jurisdiction even to grant a decree of injunction to prevent the threatened injury on account of the alleged breach of

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contract if the contract is one which is recognized by and enforceable under the Act alone."

18. Mr. S. Ravindran, the learned Senior Counsel appearing for the plaintiff stated that the documents filed on behalf of the defendants have not been referred in the order under question. The learned judge has to examine the averments in the plaint and the documents filed along with plaint. But when the plaint itself is barred by any Special Law, particularly as in this case under Section 18 of the Trade Unions Act, 1926, in my considered opinion, the sequence of events will have to be examined not only as stated by the plaintiff, but, if any fact had been suppressed by the plaintiff, then that fact has to be examined. I am consciously not examining each one of the documents filed by the defendants, in view of the limitation imposed while examining an application under Order 7 Rule 11(d) of the CPC. But I am of the opinion that I am justified in narrating the sequence of events.

19. This sequence indicates that the pamphlets/letters were issued by the Union due to a dispute which arose

and later the parties moved forward to settle the issues before the Conciliation Officer. The Conciliation Officer invited both the plaintiff and the defendants and advised to them to reconcile the issues. Thereafter, the plaintiff had filed the present suit basing the cause of action on the pamphlet/letters issued by the defendants herein but had suppressed information about the Conciliation processes which took place before the Conciliation Officer and before the institution of the suit. That is a suppression of a material fact and the plaint suffers on that ground. Quite apart from the suppression of material facts, the plaint itself is barred under Section 18 of the Trade Unions Act 1926.

20. In view of the all these facts, I hold that the suit cannot be permitted to stand on the file of the II Assistant City Civil Court, Chennai. Accordingly, the Revision Petition is allowed and the order of the learned Judge is set aside. No order as to costs. Consequently, the connected miscellaneous petition is closed. ■

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