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*Editorial*

## PEOPLE'S POWER FORCES GOVERNMENT TO RETREAT ON BANKING LAWS (AMENDMENT BILL), 2021

The Government had listed the Banking Amendment Bill, 2021 in the agenda items to be tabled during the winter session of the Parliament to keep its commitment of paving the way for bank privatisation and in consistence with its announcement of privatising at least two public sector banks during the current fiscal. The government's move has to be viewed in conjunction with its decision to open the insurance sector and enact laws and provisions allowing unfettered entry to the foreign finance capital in India. The entire gamut of the government's grand design will eventually lead to strangulating the entire financial sector. Against this backdrop, the Bharat Yatra movement conceptualised by AIBOC commenced on a wintry morning of 24th November, 2021 with a clarion call #BankBachaoDeshBachao. It is implicit that the government's move is not confined to privatising a few public sector banks only and has a sinister design to compromise country's economic sovereignty. Hence, the movement is not a narrow one of protecting the public sector banks only but a wider one encompassing all sections of the stakeholders to protect the very foundation of an independent national economy, thereby guaranteeing its hard-earned political freedom.

AIBOC leadership had correctly anticipated the government move and immediately drew the resistance movement's blueprint. The cornerstone of the movement is to involve all the stakeholders in particular and the citizenry in general. This is

also the lesson of the farmers' movement. Today, when the attack is all-pervading, the resistance must be organised by building the broadest possible unity off and on the movement. The announcement of Bharat Yatra, its implementation with finalization to the minutest details was worked out with the precision normally observed in a war room. The Bharat Yatra rolled out from Kolkata and Mumbai, traversed through the heart of the country, particularly through the poll bound state of Uttar Pradesh, touching the hearts of millions and converged to a sea of humanity at Jantar Mantar on 30th November, 2021. This is for the first time in the history of the Confederation; such a march was organised that galvanized the entire membership reaching out to the stakeholders across the nation.

The success of the Bharat Yatra, followed by a presentation of an economic case study shredding apart the misplaced narrative propagated by the government machinery in favour of privatisation, received encouraging response and endorsement from the lawmakers. This is a perfect example of building a bridge between the struggle in the street and the struggle inside the Parliament. The Confederation has been able to enlist the support from several state governments and national political parties apart from the heroes of the victorious Kisan movement as well as the central trade unions, various resistance groups, student fraternity, social media influencers' et al. The fight to save the bank and financial sector has thus truly,

**A JUG FILLS DROP BY DROP**

symbolized the broadest unified platform of the toiling masses upholding the inspiring clarion call. The sustained campaign on social media, especially on the dedicated Facebook page [www.facebook.com/BankBachaoDeshBachao/](http://www.facebook.com/BankBachaoDeshBachao/) having nearly 70K followers reached out to millions on a real-time basis. All these had set the stage for the call of the strike by UFBU on the 16th and 17th, December, 2021 and its stupendous success. The youth came out in thousands and took an inspirational role in the rallies, gate demonstrations, and picketing. They were on a combat mode duly supported by their seniors and blessed by the presence of personalities representing various walks of social life. Indeed, the struggle has become synonymous with the urge to protect our constitution's secular, inclusive, democratic, and socialist character. We salute the entire membership and their captains for churning the movement to such a great height.

We are reminded of an important quote from an iconic national leader. ***"Sorrow and calamity may bear down upon us or encompass us. But we have to carry on, to the best of our ability, the work with which we are charged. Indeed, every calamity is a challenge to our manhood and our nationhood, and an individual or a nation is judged ultimately by the way this challenge is accepted. The entire world today is a huge question mark and a challenge. To this, we have to add our own problems and difficulties. Perhaps it is true that a nation can only truly advance if it has to go through the fire from time to time. It is through this process that we ultimately attained our freedom, and it is perhaps because that process stopped that we grew soft and indolent. We see a curious spectacle around us in the world. The very success that men aim at and struggle for leads often enough to a deterioration of that vital quality which brings real progress to the nation. Failure or lack of success is often the spur to greater effort. Victors in war try to overreach themselves and are not satisfied with what they have got, aim at more. Thus they get entangled and lose the fruits of victory. The defeated drag***

***themselves up from the very depths of despair and make good. That surely does not mean that victory is bad and defeat good. But it does mean, I think, that both victory and defeat depend ultimately on some inner quality, and if this is lacking, then other unforeseen consequences follow."***

Yes, we cannot claim victory at this point. But we cannot deny that we have forced the government to retreat by not bringing the Banking Laws Amendment Bill, 2021, in the House during the winter session. People's movement forced the government to take this decision. But we cannot lose sight of the fact that they will attempt again in the Budget Session. The government enjoys a brute majority in Lok Sabha and would ensure passage of any bill in the Upper House by any means. We can draw a simile to test cricket - you take one session at a time. Similarly, we have to brace ourselves for a sustained struggle. This is the message we would usher in the year 2022; to be in battle readiness until the proposed banking amendment bill is annulled.

We are led to these thoughts look around the world today and when we consider the state of our own country. We have a great heritage, both old and new. But somehow, we do not live up to it and grow slack and lazy and lack discipline. The incredible urge to go ahead in a common brotherhood of thought and action is wanting. Our conversation has fine materials. We are convinced, if we can utilize it to the best advantage, to bring back to our minds the flaming ideal of struggle and dedication for a cause, which many of us knew in the early years of our Confederated life. It is not so much of a material benefit that we want, although desirable; what we wish are comrades with a purpose and a will to achieve and with a capacity to work together.

We again extend our warm New Year greetings to all our members, readers, well-wishers, and their families. We completed 2020 with an unprecedented victory in the wage revision talk.

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

We could force the government to concede our demand to negotiate for Scale-I to Scale-VII officers defeating their ill-conceived idea of a fractured mandate. We are bidding goodbye to the year 2021 by forcing the government to backtrack on its declaration on the floor of the house that they would be able to privatise banks during the fiscal year 2021-22 itself. We are confident that the year 2022 would be the year when we would be able to ensure the settlement of all pending issues so dear to our hearts and do justice to the aspirations of our seniors for a decent living while

simultaneously forcing the power that be for the burial of the ill-conceived notion of privatisation of public sector banks and that of selling national assets under the guise of NMP in general.

*March on comrades,*

**#NationAgainstPrivatisation**

**#StrikeHard**

**#PowerofUnity**

**#BankBachaoDeshBachao**

**VISUALS SPEAK MORE ELOQUENTLY. SALUTE TO COMRADES WHO HIT THE STREETS. GLIMPSES OF BHARAT-YATRA AND TWO DAY BANK STRIKE:**



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



**OVERCOME ANGER BY LOVE, EVIL BY GOOD**



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



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



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



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



## CIRCULARS

**76 dated 01st December, 2021:** Circular on UFBU announcing agitation programme of bank strike on 16th and 17th December, 2021

**77 dated 01st December, 2021:** Circular covering Bharat Yatra - "Bank Bachao, Desh Bachao" rally and meeting at Jantar Mantar, New Delhi on 30th November, 2021 – another milestone in banking trade union movement

**78 dated 02nd December, 2021:** Text of UFBU Letter No. 2021/18 dated 02.12.2021 on memorandum to MPs on agitation programme by UFBU

**79 dated 03rd December, 2021:** Text of UFBU Letter No. 2021/19 dated 03.12.2021 on Black Badge wearing on 9th December, 2021

**80 dated 09th December, 2021:** Text of UFBU Letter No. 2021/20 dated 08.12.2021 - Conciliation

meeting held on 08.12.2021 strike stands

**81 dated 10th December, 2021:** Text of UFBU Letter No. 2021/21 dated 09.12.2021 - Fraternal support from Central Trade Unions to our Strike

**82 dated 10th December, 2021:** Text of UFBU Letter No. 2021/22 dated 10.12.2021 - Our call for strike on 16th and 17th December, 2021 Meeting with IBA held today

**83 dated 14th December, 2021:** Text of UFBU Letter No. 2021/23 dated 14.12.2021 - Our call for strike on 16th and 17th December, 2021 - Conciliation meeting held today

**84 dated 17th December, 2021:** Text of UFBU Letter No. 2021/24 dated 17.12.2021 - Congratulations! stupendous success in 2 day strike

## Judicial Verdict

**2021 LLR 930  
BOMBAY HIGH COURT  
Hon'ble Mr. R.G.Avachat, J.  
W.P. No. 7838, 7840, 7845, 7876 and 8106/2018  
Dt/- 20-1-2021  
Divisional Controller, Maharashtra State Road  
Transport Corporation  
vs  
Shridhar Baburao Lokhande**

***PAYMENT OF GRATUITY ACT, 1972 – Section 4(6)(b)(ii) – Forfeiture not justified – After holding enquiry, services of employees were dismissed – They were not paid gratuity – Controlling Authority directed petitioner to pay gratuity to employees – Appeal filed by petitioner failed – Petitioner challenged orders of lower authorities in writ petition – Held, forfeiture of gratuity is not proper since no FIR was lodged against employees in respect of misappropriation of money or criminal breach of trust which could be termed as a moral turpitude – Writ petition is dismissed.***

For Petitioner: Mr. Bhausahab S. Deshmukh,  
Advocate.

For Respondents: Mr. Parag V. Barde, Advocate.

### IMPORTANT POINTS

Forfeiture of gratuity of an employee is possible only under the provisions of Section 4(6) (a) and 4(6)(b) of the Payment of Gratuity Act, 1972.

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

Forfeiture of gratuity is not sustainable since no FIR was lodged against employees by the employer in respect of misappropriation of money or criminal breach of trust which could be termed as a moral turpitude.

Forfeiture of gratuity, payable to an employee, without compliance of provisions as provided under Section 4(6) of the Payment of Gratuity Act, 1972.

#### **JUDGMENT : R.G. Avachat J.**

1. This order governs disposal of these five writ petitions under Article 227 of the Constitution of India, since common question of facts and law arise therein.

2. The challenge in all these writ petitions is to the judgment and order passed by the Industrial Court, setting aside the orders passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (for short 'the Act of 1972'), directing forfeiture of gratuity payable to the respondents herein.

3. Facts:- The Maharashtra State Road Transport Corporation (MSRTC) is the petitioner in all these writ petitions. The respondents were its employees as 'Conductors'. They were found to have misappropriated some amount collected from the passengers. Departmental Enquiries were, therefore, initiated against all of them. Charges framed against them were proved. The Divisional Traffic Superintendent-cum-Competent Authority (the Competent Authority), Ahmednagar, therefore, dismissed them from service. Later on, the Divisional Controller, MSRTC, Ahmednagar passed an order of forfeiture of gratuity payable to the respondents. Meanwhile, the respondents had moved Assistant Labour Commissioner-cum-Controller under the Act of 1972, for release of gratuity in their favour. The Controller allowed their applications and directed the petitioner - MSRTC to pay the amount due and payable to the respondents along with 10% interest thereon. The MSRTC challenged those orders in appeals before the Industrial Court, Ahmednagar, which modified the orders to the extent of rate of interest and date from which would become payable. The MSRTC has, therefore, preferred these writ

petitions.

4. Shri Deshmukh, learned Advocate appearing for the petitioner - MSRTC would submit that both the Courts below had allowed the gratuity/case of the respondents on the ground that the show cause notice was not issued to them before forfeiting the amount of gratuity. The applications for release of gratuity amount were filed after a period of about 7/8 years from the date of dismissal. The MSRTC produced the copy of show cause notice before the Industrial Court during hearing of the appeals. This Court, in Writ Petition No. 9096 of 2016 (The Divisional Controller, MSRTC vs. Govind Sambhaji Hanumante), has found forfeiture of gratuity amount to be justified on account of charge of misappropriation found to be proved in departmental enquiry. The Court held that the conduct was nothing short of a moral turpitude. The reliance on the judgment delivered by the Apex Court in the case of Union Bank of India and Ors. vs. C. G. Ajay Babu and Anr. - AIR 2018 SC 3792 has been distinguished by this Court in the case of Maharashtra Gramin Bank Vs. Bharatibai Ramesh Kambale and Ors., - 2019 DGLS (Bom.) 1747. In the case of C.G. Ajay Babu (supra), there was bipartite agreement between the bank and the employees about forfeiture of gratuity only in case of financial loss was caused to the bank on account of misconduct. In the present case, action of dismissal on account of moral turpitude and financial loss caused on account of fraud and misconduct by the respondents, has been proved. The order of dismissal on this ground has been sustained before the Labour and the Industrial Court. The learned Advocate, therefore, urged for allowing the writ petitions.

5. Mr. Parag Barde, learned Advocate appearing for the respondents herein, would submit that the amount of gratuity has been forfeited on the ground of respondents having been involved in the offence of moral turpitude. According to him, Section 4(6)(b)(ii) of the Act of 1972 has been interpreted by the Apex Court in the case of C.G. Ajay Babu (supra). No FIR had been registered against the respondents for misappropriation of funds nor complaint had been filed to take to its logical conclusion. The amount of gratuity, was therefore, not liable to be forfeited.

***HE WHO SEEKS HAPPINESS BY HURTING WILL NEVER FIND IT***

Learned Advocate would further submit that before an order regarding forfeiture of gratuity is passed, the concerned employee is required to be given an opportunity of hearing, so has not happened in this case. Order regarding forfeiture has been passed along with the order of dismissal. Later on, the notice was issued to the respondents to show cause as to why the same should not be forfeited. According to the learned Advocate, no interference with the impugned orders, are therefore, called for.

6. Section 4(6)(b)(ii) of the Act of 1972, reads as follows:

"4. Payment of gratuity-

1 ...  
2 ...  
3 ...  
4 ...  
5 ....

6. Notwithstanding anything contained in sub-section (1)- (b) the gratuity payable to an employee [ may be wholly or partially forfeited]-

(i)....

(ii) if the services of such employee have been terminated for any act which constitute an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

7. The amount of gratuity payable to the respondents herein, is sought to be forfeited on the ground of their conduct being moral turpitude and thereby caused damage to the interest of the MSRTC. It is reiterated that the respondents have been dismissed from service on account of having been found to have misappropriated the amount of fare collected from the passengers travelling in MSRTC buses. Their dismissal has attained finality as they have been unsuccessful in the proceedings initiated for challenging the dismissal.

8. Section 4(6)(b)(ii) of the Act of 1972 empowers on an employer to forfeit gratuity wholly or partially in case the services of such employee have been

terminated for any act, which constitutes an offence involving moral turpitude, provided such offence is committed by him in the course of his employment.

9. The Apex Court, in the case of C.G. Ajay Babu (supra) has held/observed thus:

"S. 4(6)(a) and S.(6)(b) of Act operate in different fields and in different circumstances. Under sub-clause (a), the forfeiture is to the extent of damage or loss caused on account of the misconduct of the employee whereas under sub-clause (b), forfeiture is permissible either wholly or partially in totally different circumstances. Sub-Clause (b) operates either when the termination is on account of - (I) riotous or (ii) disorderly or (iii) any other act of violence on the part of the employee, and under sub-clause (ii) of sub-section (6)(b) when the termination is on account any act which constitutes an offence involving moral turpitude committed during the course of employment. It is not the conduct of a person involving moral turpitude that is required for forfeiture of gratuity but the conduct or the act should constitute an offence involving moral turpitude. To be an offence, the act should be made punishable under law. That is absolutely in the realm of criminal law. It is not for the Bank to decide whether an offence has been committed. It is for the court. Apart from the disciplinary proceedings initiated by the appellant Bank, the Bank has not set the criminal law in motion either by registering an FIR or by filing a criminal complaint so as to establish that the misconduct leading to dismissal is an offence involving moral turpitude. Under sub-section (6) (b)(ii) of the Act, forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, and convicted accordingly by a court of competent jurisdiction. ...."

10. Admittedly, the MSRTC has neither filed First Information Report nor lodged any complaint, alleging the respondents to have misappropriated the money. The amount of gratuity payable to the respondents is therefore not liable for forfeiture under the aforesaid provision. Similar view has been taken by this Court in Writ Petition No.6006 of 2016 (Nagpur Bench), decided on 29.01.2020.

**DO NOT DWELL ON THE PAST OR FUTURE. CONCENTRATE ON THE PRESENT MOMENT**

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11. Learned Advocate for the petitioner has relied on the judgment of this Court in the case of Maharashtra Gramin Bank (supra) and submitted that the judgment of the Apex Court in C.G. Ajay Babu's case has been distinguished therein. According to the learned Advocate, there was a bipartite agreement between the bank and the employee.

12. Learned Advocate for the respondents would submit that an application for review of the judgment in Maharashtra Gramin Bank (supra) has been filed and the Court has been pleased to issue notice therein.

13. In my view, since the Apex Court in C.G. Ajay Babu's case, has interpreted the provision of Section 4(6)(b)(ii) of the Act of 1972, I have to follow the same to observe that the amount of gratuity payable to the respondents is not liable to be forfeited, since they have not been held by a Court of competent jurisdiction to have committed an offence of misappropriation, criminal breach of trust or any other offence which may be termed to be a moral turpitude.

14. The writ petitions, therefore, fail. The same are dismissed.



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