
(1992) 12 BOM CK 0036
In the Bombay High Court
Case No : Writ Petition 1886 of 1986

Association of Chemical Workers

APPELLANT

Vs

N.A. Kadam and Others

RESPONDENT

Date of Decision : 02-12-1992

Acts Referred:

Trade Unions Act, 1926 — Section 27

Citation : (1993) 1 LLJ 1144

Hon'ble Judges : V. Ratnam, J;Somasundaram, J

Bench : Division Bench

Advocate : N.D. Buch, for the Appellant; R.K. Habbu, for the Respondent

Judgement

1. This Writ Petition challenges an Order of the Industrial Court, Maharashtra, Thane, dated January 31, 1985, made in Complaint (ULP) No. 29 of 1977, a proceeding under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act")

2. The Second Respondent is a Company, which manufactures Polyester Staple Fibre at its factory at Thane. Prior to April 1972, the members of a union, known as "ICI and Allied Companies Employees" Union", which was recognised by the Management of the Second Respondent under the Code of discipline. This union was extended several facilities extended to a recognised union under the Code of Discipline and also given a room for conducting its office within the premises of the Second Respondent-factory. In April, 1972, the said union withdrew from the scene after informing the Second Respondent that its employees had ceased to be members of the said union. Thereafter the workmen formed an internal union, which is the Seventh Respondent to this petition. The Seventh Respondent-Union was also given the facility of using the office, which was formerly occupied by the erstwhile ICI and Allied Companies Employees" Union. At this stage, the Petitioner-Union came on the scene and claimed to be the successor-union of the defunct ICI And Allied Companies Employees" Union. The claims made by the

Petitioner Union, based on alleged succession, were rightly turned down by the Second Respondent. Between the two, the Second Respondent considered the Seventh Respondent Union as more suitable for recognition, and, by a letter dated July 31, 1973, the Second Respondent accorded recognition to the Seventh Respondent under the Code of Discipline. This recognition Second Respondent's bona fide belief that the Seventh Respondent represented the majority of the workmen in its factory. Apart from granting recognition to the Seventh Respondent-Union, the Second Respondent also made available certain other facilities to the union, which were concomitant with its status as recognised union. This situation continued unabated till the coming into force of the Act with effect from September 8, 1975. Even after coming into force of the said Act, the Second Respondent continued to extend the facilities to the Seventh Respondent, which it had enjoyed prior to September 8, 1975. During the period subsequent to 1975, during the year 1976 to be precise, the Second Respondent sponsored some of the office-bearers of the Seventh Respondent-Union to attend national level conferences, seminars and training programmes concerning important Industrial Relations issues. It is also not disputed that the Second Respondent had nominated members of the Seventh Respondent-Union on Joint Management Councils and non-statutory bipartite committees, such as Production Committee, Welfare Committee, Canteen Committee and House Election Committee, which had been set up by the Management of the Second Respondent. All this seems to have been done by the Second Respondent under the impression that the Seventh Respondent, which was the union recognised under the provisions of the Code of Discipline, would be entitled to continue enjoyment of such facilities even after the Act came into force.

3. On April 19, 1977, the Petitioner-Union filed a Complaint (ULP) No. 29 of 1977 before the Industrial Court at Thane, alleging unfair labour practices under Items 1, 2, 2 (a), 2 (b), 3 and 4 of Schedule II, Item 2 of the Schedule III and Item 5 of schedule IV of the Act on the part of the Management of the Second Respondent. This complaint came to be tried, and has been dismissed by the Industrial Court's order, which is under challenge in the petition.

4. Despite the bulk of the petition, the crux of the matter lies within a very narrow compass. Ms. Buch, learned advocate appearing for the petitioner, stated, at the outset, that the petitioner is pressing the petition only with regard to Item 2(b) and Item 3 of the Schedule II of the Act. Therefore, no other provision of law need be considered in this petition.

5. It is not disputed by Mr. Habbu, learned counsel appearing for respondent No. 2, that the facilities as aforestated were made available to the Seventh Respondent and continued to be made available even after the Act coming into force. The contention of the Second Respondent before the Industrial Court, and here, has been that extension of such facilities to a Union, recognised under the Code of Discipline, does not amount to an unfair labour practice. The Petitioner-Union had made an application for recognition under Chapter III of the Act, being

Application (MRTU) No. 2 of 1973, which came to be dismissed by the Industrial Court on June 13, 1977. Thereafter, an application was made by the Seventh Respondent-Union vide Application No. 43 of 1978, which has been granted by the Industrial Court by its order dated May 25, 1983. Consequently, the Seventh Respondent has been recognised as a recognised union, under the provisions of Chapter III of the Act from May 25, 1983. Mr. Habbu contends that, if, during the interregnum between September 8, 1975 and May 25, 1983, the Seventh Respondent-Union continued to enjoy the facilities which had been given to it even prior to the coming into force of the Act, such act on the part of the Second Respondent - Employer would not amount to an unfair labour practice under the Act. He went one step further, and invoked support from the Code of Discipline, under which recognition had already been granted to the Seventh Respondent from July 31, 1973. From July 31, 1973 to May 24, 1983, the Seventh Respondent was recognised under the Code of Discipline, and, thereafter, admittedly, it is a recognised union. If such a union was given any of the facilities as have been already referred to, it would not amount to an "unfair labour practice" within the meaning of Item 2(b) or 3 of Schedule II of the Act, in the submission of the learned counsel.

6. A reading of the impugned order of the Industrial Court shows that it has accepted wholly the argument of the Second Respondent-employer, and taken the view that, since the Seventh Respondent was already recognised under the Code of Discipline, the continued extension of the various facilities referred to hereinbefore did not amount to an "unfair labour practice" under the Act. I am afraid, whatever might have been the situation when the Industrial Court decided the case, it is not possible to accept this contention presently. A Division Bench of this Court, in *Maharashtra State Road Transport Corporation, Bombay, and etc. v. Maharashtra Motor Kamgar Federation, Nagpur & Anr. etc.* 1986 LIC 253 has clarified the law on the subject. In that case, two of the several unions in the field had been recognised prior to coming into force of the Act under the Code of Discipline. After the coming into force of the Act also, the employer invited the said two unions to participate in collective bargaining, but did not extend the invitation to another union which was laps in the field, but which had not been so recognised earlier. As a matter of fact, none of the unions had been recognised under the Act. The Division Bench pointed out that, while no fault could be attributed to the employer for inviting the representatives of the two unions, which had been earlier recognised under the Code of Discipline, with the enforcement of the Act from September 8, 1975, the position had obviously changed. The Division Bench pointed out that, after coming into force of the Act, all unions/federations had been brought to an equal position and status irrespective of the quantitative strength of membership and enjoyment of equal protection from the Management so long as one of them is not recognised under the Act. It pointed out that even the unions, which had hitherto enjoyed a privileged status under the Code of Discipline as recognised unions, were brought on par with all other unions operating in the field upon the coming into force of

the Act. Said the Division Bench :-

"... Their status under the Act is no better than the one of the unrecognised union. Impliedly "the Code of Discipline" has lost its value wherever the Act is brought into force."

The Division Bench then considered the provisions of Item 2(b) of Schedule II of the Act, and pointed out :-

"The prohibition to indulge in the aforesaid unfair labour practice is apparent from S. 27 of the Act. Item 2(b) envisages that the employer shall not dominate, interfere with, or contribute, support to any union by show of partiality or favouritism attempting to organise its membership where such a union is not a recognised union. The emphasis is on the words "where such a union is not a recognised union". It clearly suggests that unless the union is recognised under the Act, the employer is strictly prohibited from interfering with or supporting any of the unions either by show of partiality or favouritism, the whole idea being that the employer should treat all unions equally with the view that the unions in the field can organise themselves, and one who satisfied the conditions for being recognised under would move in that direction. Showing of partiality or favouritism at such a juncture would be disadvantageous to the other unions also functioning in the undertaking or industry. With this end in view provision has been made to avoid unhealthy competition among the unions, when they are still at organisational stage."

7. As I stated earlier, whatever might have been the position when the Industrial Court decided the complaint, with the emphatic statement of the law by the Division Bench as above, it is not possible to accept the contention of the Second Respondent's counsel that it could have extended and continued to extend such privileged facilities only to the Seventh Respondent after the coming into force of the Act on the footing that the Seventh Respondent was recognised as a recognised union under the Code of Discipline. It is not in dispute that between September 8, 1975 and May 25, 1983 there was no union in the field which was recognised under Chapter III of the Act. Apart from the view expressed by the Division Bench that whatever might have been the recognised under the Code of Discipline, it would cease to exist upon the coming into force of the Act, Paragraph 18 in Chapter IX of the Code of Discipline itself provides that the recognised under the Code would be subject to and over-ridden by legal provisions on the subject of recognition of trade unions, wherever such provisions exist. It is, therefore, obvious that, as from the date of the coming into force of the Act, the special status enjoyed by the Seventh Respondent-Union ceased to exist, and, in the interregnum between September 8, 1975 and May 24, 1983, the Petitioner-Union and the Seventh Respondent-Union ought to have been treated on the same footing, irrespective of their numerical strength of membership. This was not done, admittedly. Though Mr. Habbu faintly argued that the facilities given, viz., of sponsoring of office-bearers to important national conferences and training programmes on Industrial Relations and nominations of

the members of the Seventh Respondent to various non-statutory committees set up by the Second Respondent-employer, per se, did not amount to an "unfair labour practice" falling within Item 2(b) of Schedule II of the Act. I am afraid, it is not possible to accept the contention. These are special privileges accordable only to a union which acquires the mantle of recognition. Obviously, these are allowed with a view to ensure that the union is able to maintain the status of recognised union which it has acquired. If the earlier status was lost due to the coming into force of the Act, according such special privileges to one union, without extending them to another equally situated union in the field, in my view, would clearly fall within the mischief of Item 2(b) of Schedule II of the Act. I am, therefore, of the opinion that the Industrial Court's order is erroneous, and needs to be set aside, though I must say, in its favour, that it did not have the benefit of the law laid down by the Division Bench in the year 1986 when the Industrial Court decided the Complaint. (Ms. Buch, however, says that the judgment of the learned Single Judge (Paunikar, J. which was the subject matter of the appeal before the Division Bench, had been made available to the Industrial Court during the course of arguments. She also states that this is one of the grounds specifically raised in ground (s) of the Writ Petition. On perusal of the Industrial Court's Order, however, I see no reference whatsoever to the Judgment referred to by Ms. Buch).

8. Ms. Buch contends that the acts admitted by the Second Respondent also amount to "unfair labour practices" within the meaning of Item 3 of Schedule II. It is difficult to accept this contention. Item 3 requires something more than according facilities to the union. It requires positive action on the part of the employers of establishing a sponsored union. In the present case, there is not a scrap of evidence to warrant such a finding. The admissions made by the Seventh Respondent also would not attract the mischief of Item 3 of Schedule II of the Act. I am, therefore, unable to accede to the submissions.

9. While it is necessary to quash and set aside the impugned order of the Industrial Court, there is no consequential relief that can be granted at this point of time. Ms. Buch rightly did not press for any consequential relief, and stated that the petitioner would rest content if a declaration, as sought, is granted.

10. In the result, the petition is allowed, and rule is made absolute. The impugned order of the Industrial Court dated January 31, 1985, is hereby quashed and set aside, and the following declaration is made on the complaint :-

(i) By sponsoring the office-bearers of the Seventh Respondent to National Conference on Industrial Relations, (ii) by sponsoring the office-bearers of the said union for training courses in Industrial Relations, (iii) by making available office premises to the Seventh Respondent within the factory area, (iv) by nominating the members of the Seventh Respondent Union to non-statutory committees set up by the Seventh Respondent during the period September 8, 1975 to May 24, 1983, without extending the same privileges and facilities to the Petitioner, the Second Respondent has engaged in an unfair labour practice

within the meaning of Item 2 (b) of Schedule II of the Act.

11. Rule made absolute accordingly. No order as to costs.