

**(1983) 09 BOM CK 0003**

**In the Bombay High Court**

**Case No : Writ Petition No. 1759 of 1983**

Association of Engineering Workers

APPELLANT

Vs

Automobile Products of India Ltd.

RESPONDENT

**Date of Decision : 14-09-1983**

**Acts Referred:**

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 11, 13, 3

**Citation : (1984) 86 BOMLR 52**

**Hon'ble Judges : Kantharia, J; Dharmadhikari, J**

**Bench : Division Bench**

**Final Decision : Allowed**

## Judgement

Kantharia, J.—This writ petition is directed against the order dated April 18, 1983 passed by the learned Member of the Industrial Court Maharashtra, Thane, Camp at Bombay (hereinafter referred to as "respondent No. 3"), in application (MRTU) No. 2 of 1982, cancelling the recognition of Association of Engineering Workers, having their office at Janata Colony, Plot No. 252, R.N. Narkar Marg, Ghatkopar, Bombay 400 077 (hereinafter referred to as "the petitioner") u/s 13(I)(i) of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act") at the instance of Automobile Products of India Employees' Union, having their office at Automobile Products of India Ltd., Lal Bahadur Shastri Marg, Bhandup, Bombay 400078 (hereinafter referred to as "respondent No. 2").

2. The short facts giving rise to this writ petition are that respondent No. 1 viz. Automobile Products of India Ltd., Lal Bhadur Shastri Marg, Bhandup, Bombay 78 (hereinafter referred to as "the Undertaking"), is a public limited company. It carries on business in manufacturing scooters and three-wheelers at its Bhandup factory. It employed about 2,000 employees over there. The petitioners union had been functioning amongst the employees of this Undertaking since before 1977. They then made application (MRTU) No. 3 on 1977 in the Industrial Court

at Thane u/s 11 of the Act for being registered as a recognised Union for the Undertaking on January 12, 1977. The Industrial Court accordingly by its judgment and order dated March 30, 1977 granted the said application and ordered that the petitioners be registered as a recognised union for the undertaking. In pursuance of such an order a certificate of recognition was issued in favour of the petitioners in the name of their API Branch, Bhandup, Bombay 78. This certificate of recognition bearing No. 27 of 1977 was signed by the Assistant Registrar, Industrial Court, Thane. The petitioners were accordingly functioning in, the undertaking as a recognised union. However, in the year 1981 respondent No. 2 enrolled some members from amongst the employees of the Undertaking and thereafter made application (MRTU) No. 2 of 1982 to the Industrial Court that the recognition granted to the petitioners was on account of mistake, misrepresentation or fraud and that the petitioners were not conducting themselves bona fide in the interest of the employees, but in the interests of the employers to the prejudice of the employees and further that the registration of the petitioners under the Trade Union Act, 1926 was cancelled and as such the recognition granted to them should be cancelled u/s 13(1)(ii)(iv) and (vi) of the Act. Respondent No. 3 who heard this application came to the conclusion that the petitioners had got the recognition under mistake and misrepresentation but not under fraud. And he further held that the petitioners were functioning not in collusion with the Undertaking in furthering the interests of the employers to the prejudice of the employees. He also held that the "branch" or "unit" of the petitioners operating in the Undertaking who had made application for recognition was never registered under the Trade Unions Act, 1926 and hence the question of its registration being cancelled does not arise. He accordingly cancelled the recognition of the petitioners by his impugned order. In other words, the recognition of the petitioners came to be cancelled on the ground that it was granted under mistake and misrepresentation. Being aggrieved by this order, the petitioners filed the present petition.

3. Now, submissions made at the Bar mainly are that according to Mr. Shastri, learned Counsel appearing on behalf of respondent No. 2, the applicant in application! (MRTU) No. 3 of 1977 to whom recognition was granted was "Association of Engineering Workers, API Branch, Bhandup, Bombay 78," which was not registered under Trade Unions Act, 1926 and hence was not a union as defined u/s 3(17) of the Act which envisages that "union" means a trade union of employees, which is registered under the Trade Unions Act, 1926. Thus as per submission of Mr. Shastri, the recognition was granted to a non-existent union under a mistake by the learned Member then presiding over the Industrial Court, Thane, who decided application (MRTU) No. 3 of 1977. Mr. Shastri further submitted that the statement of the applicant union in application (MRTU) No. 3 of 1977 that it was registered under Trade Unions Act, 1926 vide certificate No. 3178 was a misrepresentation, for, "Association of Engineering Workers, API Branch, Bhandup, Bombay 78", was never granted such registration number by the Registrar of Trade Unions. On the other hand, Mr. Deshmukh, learned

Counsel appearing on behalf of the petitioners, urged that the applicants in application (MRTU) No. 3 of 1977 were, in fact, the present petitioners viz. "Association of Engineering Workers" and its description in the said application was given as "API Branch, Bhandup, Bombay 78", as and by way of specific identification. Therefore, in the submission of Mr. Deshmukh recognition was granted to the petitioners and not to a nonexistent union as canvassed by Mr. Shastri. In other words, Mr. Deshmukh contended that there was no mistake on the part of the learned Member of the Industrial Court who disposed of application (MRTU) No. 3 of 1977 in granting recognition. Mr. Deshmukh also submitted that there was no misrepresentation made by the applicant-union, at the time of filing application (MRTU) No. 3 of 1977 because the said application was, in fact, filed by the present petitioners, describing themselves as "API Branch" and it is not in dispute that the present petitioners were granted certificate No. 3178 by the Registrar of Trade Unions, under the Trade Unions Act, 1926.

4. With a view to appreciate the rival contentions raised before us let it be first noted that since the allegations made against the petitioners under Sub-section (1)(iv) and (vi) of Section 13 of the Act are held to be not proved by the lower court and there being no challenge to it, we shall confine our discussion pertaining only to the provisions of Section 13(1)(i) of the Act which read as under :

The Industrial Court shall cancel the recognition of a union if after giving notice to such union to show cause why its recognition should not be cancelled and after holding an inquiry, it is satisfied (i) that it was recognised under mistake, misrepresentation or fraud.

As stated earlier, respondent No. 3 held that it was on account of mistake that while disposing of application (MRTU) No. 3 of 1977 recognition was granted to a non-existent union viz. "Association of Engineering Workers, API Branch, Bhandup, Bombay 78" which was not a registered trade union at all and such a mistake was committed because an averment was made in the application seeking recognition that it was registered under the Trade Unions Act, vide Certificate No. 3178 issued by the Registrar of Trade Unions. Since according to respondent No. 3, the certificate of registration did not pertain to the "Association of Engineering Workers, API Branch, Bhandup, Bombay 78", he also held that it was a misrepresentation made to the Industrial Court by the applicant-union at the time of making application (MRTU) No. 3 of 1977 that it was registered as such, For coming to these conclusions he gave reasons that the office bearers of the applicant-union as described in column No. 2 of the application would show that one D. Gabriel was the vice-president but the record shows that he was not the vice-president of the present petitioners and, therefore, the application was in fact made by the "Association of Engineering Workers, APT Branch, Bhandup, Bombay 78" and not by the parent organization. The other reasons given by him are that in column Nos. 12 and 13 of the

application it was shown that the applicant-union had not on its roll members-employees employed in any undertaking other than the Undertaking for which the application was filed and that the applicant-union was a recognised union for no other undertaking and that this cannot be true in case of "Association of Engineering Workers" because it is a huge organization having branches at many places all over Maharashtra and it must have been recognised for many other undertakings. Therefore, according to respondent No. 3, the application in question was, in fact, made by "Association of Engineering Workers, API Branch," and not by the parent organization. In our opinion the order of respondent No. 3 is vitiated by the errors apparent on the face of record. Thus it is clear, as has been brought to our notice, that the averments made in application (MRTU) No. 3 of 1977 were made in bona fide belief that the information supplied to the Industrial Court was with regard to the "API branch" or "unit" of the petitioners and Dr. Datta N. Samant who was described there in column No. 2 as the president was, in fact, the president of the "Association of Engineering Workers" and also the chairman of the "API Branch" of the petitioners. Further D. Gabriel was, in fact, the vice-chairman of the "API Branch" but Inadvertently both of them were described as the "President" and the "Vice-President" respectively. The constitution of the petitioners is indicative of the fact that in their branches these two important office bearers are to be designated as the "Chairman" and the "Vice-Chairman". There is no dispute about the other office bearers of the applicant-union mentioned in the said application in column No. 2. So long, as the registration of the petitioners under the Trade Unions Act, 1926, bearing certificate No. 3178 is concerned, it is an admitted fact that this registration number pertains to "Association of Engineering Workers" and not to the "API Branch" of the said parent organization. Respondent No. 3 unfortunately laboured under an impression that the "API branch" or "unit" of the petitioners functioning in the Undertaking at Bhandup was an independent body vis-a-vis the parent organization viz. "Association of Engineering Workers." This cannot be correct because when the "API branch" is accepted to be a "branch or "unit", it has got to be a "branch" or "unit" of some parent organization and cannot be an independent entity. In our case it is said that it is the "branch" or the "unit" of "Association of Engineering Workers." A perusal of the constitution of the "Association of Engineering Workers" shows that this particular union was likely to have branches functioning in various undertakings. Therefore, the certificate of registration No. 3178 issued under the Trade Unions Act as mentioned in application (MRTU) No, 3 of 1977 was in respect of the parent organization and it would be incorrect to conclude that the application for recognition was made by the "branch" of the petitioners independently by stating wrong certificate of registration No. 3178. Thus respondent No. 3 erred hi concluding that the applicant-union had made a misrepresentation to the Industrial Court in this regard. In addition, the record shows that although the petitioners described themselves, being the applicants, in application (MRTU) No. 3 of 1977 as "Association of Engineering Workers, API Branch, Bhandup, Bombay 78" which was done, as stated earlier, to be more specific to identify one of their branches

functioning in the Undertaking, the certificate of recognition was ordered to be issued to "Association of Engineering Workers, Bombay", as can be seen from the judgment and order dated March 30, 1977. However, the actual certificate of recognition was issued in the name of "Association of Engineering of Workers, API Branch, Bhandup, Bombay 78". This means that the application (MRTU) No. 3 of 1977 which the learned Member of the Industrial Court disposed of by his judgment and order dated March 30, 1977 was an application preferred by the petitioners and not by its "branch" independently. Further, the record clearly shows that the certificate of recognition issued under Rule 7 in form B dated April 7, 1977 bearing Registration No. 27 of 1977 was issued in pursuance of the judgment and order passed by the Industrial Court on March 30, 1977 in application (MRTU) No. 3 of 1977. All this goes to show that application (MRTU) No. 3 of 1977 was made by "Association of Engineering Workers" and while doing so they bona fide filled up some of the items of information such as in columns Nos. 2, 12 and 13 with regard to their "branch" functioning at the Bhandup factory of the Undertaking. It is true that some errors crept in the application (MRTU) No. 3 of 1977 in respect of some information supplied to the Industrial Court and especially with regard to the office bearers as stated hereinabove but one should not forget that if such errors alone are taken into considerations, substantial justice cannot be done to the parties. Such errors, if any, have got to be ignored for doing substantial justice. The pith and substance of the matter should be looked into. A careful perusal of the whole record in this case leaves no doubt that the application was made by no other union than the present petitioners and there was absolutely no misrepresentation made by them to the Industrial Court nor did the Court make any mistake in granting the recognition to the petitioners.

5. The other error apparent to the face of the record which is brought to our notice by Mr. Deshmukh is that respondent No. 3 while passing the order under challenge overlooked the documents as per the list annexed in column 14 of the original application. The learned Member of the Industrial Court who disposed of application (MRTU) No. 3 of 1977 had taken into consideration all those documents as can be seen from, his judgement and order dated March 30, 1977.

6. Mr. C. J. John, learned Counsel appearing on behalf of respondent No. 1, submitted that the Undertaking had fully participated in the proceedings bearing application (MRTU) No. 3 of 1977 and he had personally appeared in that matter and that there was no ambiguity in the judgment and order passed in the said matter. He further submitted that the Undertaking fully understood as to the proper name of the union who was granted recognition.

7. Under the circumstances, we have unhesitatingly come to the conclusion that the impugned order suffers from serious infirmities and as such this petition should succeed. The impugned order has, therefore, got to be quashed and set aside.

8. Before parting with the matter we may also point out that application (MRTU)

No. 2 of 1982 seeking cancellation of the recognition of the petitioners does not appear to have been made in good faith inasmuch as the affidavit filed by R.L. Mahajan, Vice-President of the "Association of Engineering Workers" shows that the person who filed application (MRTU) No. 2 of 1982 after four years since the recognition was granted to the petitioners, is one Kunjupanikar Pushpangathan who was one of the office bearers of the petitioners and after he resigned from the petitioners somewhere in the middle of 1980 another Union viz. respondent No. 2 was floated. Thereafter, respondent No. 2 has been persistently attempting to prevent the petitioners from discharging their obligations as a recognised union under the law. His affidavit further shows that respondent No. 2 had filed application (MRTU) No. 17 of 1981 for similar ad-interim relief which was granted but was subsequently vacated by an order dated December 24, 1981. Then a fresh complaint on February 24, 1982 was filed by respondent No. 2 again for similar interim relief which was refused by the Industrial Court by an order dated March 8, 1982 in complaint (ULP) No. 44 of 1982. Thus having failed in their attempts at snatching interim reliefs, respondent No. 2 filed application (MRTU) No. 2 of 1982 as another attempt to get the recognition of the petitioners cancelled. From this it is evident that the attempts made by respondent No. 2 for getting the recognition of the petitioners cancelled appear to have been made mala fide and as canvassed by the petitioners, respondent No. 2 had not approached the Industrial Court with clean hands.

9. In the premises of what we have stated above, this writ petition succeeds. The impugned order dated April 19, 1983 is hereby quashed and set aside. Rule is accordingly made absolute. No order as to costs.

10. Mr. Vardayya at this stage applies for leave to appeal to the Supreme Court. We do not find that this is a fit case where such leave could be granted. Leave refused.