

(2016) 09 BOM CK 0107

In the Bombay High Court

Case No : Writ Petition No. 5858 of 2016.

Association of Engineering Workers, Through its General Secretary, Shri Sanjay S. Kolwankar, R/o Shri Sai Datta Krupa, Janata Society, Building No. 5, R.N. Narkar Marg, Ghatkopar (E), Mumbai 400077 - Petitioner @HASH Compton Greaves Ltd., CM-3, L.T. Motor

Date of Decision : 26-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Prevention of Unfair Labour Practices Act, 1972 — Section 13, Section 5

Citation : (2016) 6 AIRBomR 246 : (2017) 1 CLR 313 : (2017) LIC 507 : (2016) 4 LLN 598 : (2017) 1 MhLJ 896

Hon'ble Judges : Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Shri P.L. Shahane a/w Shri Parag Shahane, Advocates, for the Petitioner; Shri S.P. Dhulapkar h/f Shri A.S. Shelke, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J. - Heard learned Advocates for the respective parties.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The issue, primarily raised in this petition is as regards,

"Whether the employer can seek the cancellation of recognition of a Union under Section 13 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971?"

5. The petitioner is aggrieved by the judgment and order dated 3.5.2016, by which, Application MRTU No. 1 of 2016, filed by the respondent/management under Section 13 has been allowed and the recognition granted to the petitioner/ Union under Section 12 of the Maharashtra Recognition of Trade Unions and

Prevention of Unfair Labour Practices Act, 1971 ("the 1971 Act") has been cancelled.

6. The petitioner - Union is also aggrieved by the order dated 18.2.2016, passed below application Exhibit U-4 filed by it, by which, the Industrial Court rejected the application, wherein, the petitioner had raised preliminary objections as regards the maintainability of the application for cancellation of recognition.

7. The strenuous submissions of Shri Shahane, learned Advocate for the petitioner can be summarized, in brief, as follows:-

(a) The petitioner is a registered Union at Mumbai under the Trade Union's Act, 1926 on 16.10.1958.

(b) The petitioner was granted recognition by the Industrial Court, Ahmednagar on 17.6.1995.

(c) Several settlements have been signed by the Union with the respondent/management in the past.

(d) The last settlement signed with the petitioner by the respondent completed it's tenure in March 2015.

(e) In 2007, another Union by name, "Maharashtra Samarth Kamagar Sanghatana" was formed in the respondent - establishment.

(f) In 2008, the new Union filed Application No. 3 of 2008 seeking de-recognition of the petitioner/Union.

(g) By judgment dated 22.10.2010, the Industrial Court allowed the application and de-recognised the petitioner/Union.

(h) On 8.2.2011, this Court granted a stay to the judgment of the Industrial Court in Writ Petition No. 10220 of 2010, which has led to the continuance of the recognition of the petitioner.

(i) The petitioner filed Complaint (ULP) No. 61 of 2015 under Items 5, 9 and 10 of Schedule IV of 1971 Act.

(j) All the 242 members of the Union have paid their subscription fee for the period January 2015 to December 2015. (k) By order dated 18.2.2016, the Industrial Court declined to frame preliminary issues and instead has proceeded with the matter despite the stay granted by this Court in the earlier petition.

(l) The respondent management cannot challenge the recognition of a Union and cannot seek de-recognition of the Union in the light of reported judgments.

(m) The Deputy General Manager could not have filed the application for cancellation of recognition since he was not the "Manager" under Section 2(d) of the Industrial Employment (Standing Orders) Act, 1946.

(n) A document was created to indicate that the Deputy General Manager was

authorised to file the application.

(o) The management claimed that all the 242 members of the petitioner had resigned from the Union.

(p) None of the workers have filed their resignation letters with the petitioner Union.

(q) The oral and documentary evidence reveals that no resignation was tendered to the Union.

(r) The report of the Investigating Officer has been denied by the petitioner and the same cannot be relied upon.

(s) There was no reason for the petitioner to lead oral evidence since it's case stood proved through the cross-examination of the respondent's witnesses.

(t) Reliance is placed upon the following judgments:-

(i) Automobile Products of India Employees" Union v. Association of Engineering Workers - 1990 II CLR 344 SC

(ii) Shramik Sena v. Blue Star Workers" Union and others - 2006 (2) Bom.L.C. 511

(iii) Steel Authority of India v. The Presiding Officer- 1980 LIC 1088

(iv) Shripad Anant Puranik v. The General Manager, BEST - 2010 (1) Bom. L.C. 286 and

(v) Gaurishankar Vishwakarma v. Eagle Spring Industries - 1988 I CLR 38.

8. The submissions of the learned Advocate for the respondent can be summarised as under:-

(a) Section 5(c) of the 1971 Act clearly empowers the employer or any Union to file an application for seeking withdrawal or cancellation of the recognition of a Union.

(b) Section 5(e) of the 1971 Act empowers the Industrial Court to direct the Investigating Officer in matters of verification of membership of Union and investigation of complaints relating to unfair labour practices.

(c) Section 9 of the 1971 Act permits the Investigating Officer to assist the Industrial Court in matters of verification of membership of Union.

(d) The Deputy General Manager was authorised by a resolution passed by the Board to file the application under Section 13 for seeking cancellation of recognition of the petitioner.

(e) The 242 members of the petitioner tendered their resignations and intimated the Union that they have resigned from it's membership.

(f) This Court by its order dated 23.10.2015 in Writ Petition No. 9911 of 2015, permitted the Investigating Officer to investigate whether the members of the petitioner are resigning from its membership under any force or duress or compulsion.

(g) The Investigating Officer has carried out investigation in Compliant (ULP) No. 61 of 2015 and has concluded that the workers have made a statement individually that they have resigned voluntarily from the Union.

(h) The Investigating Officer also carried out an investigation in the application for cancellation of recognition and has submitted a report indicating that not a single member continues with the petitioner Union. The personal statement of each worker was recorded.

(i) Both these reports are disputed by the petitioner.

(j) The petitioner did not seek issuance of summons to the Investigating Officer so as to examine him before the Industrial Court on the reports that he had submitted.

(k) Copies of resignation letters of all 242 employees are placed on record which bear the signatures of individual workers along with their left hand thumb impression.

(l) There is no denial by the petitioner in its written statement about the resignation of the workers from its membership.

(m) The respondent has placed reliance upon the following judgments:-

(i) D.P. Maheshwari v. Delhi Administration AIR 1984 SC 153,

(ii) Rajiv Bhalchandra Gundewar v. Compton Greaves 2000 III LLJ 774,

(iii) Uday Janardhan Kulkarni v. Geo Chem Laboratories 2009 120 FLR 218,

(iv) United Bank of India v. Naresh Kumar (1996) 6 SCC 660,

(v) J.K. Industries Ltd. v. Chief Inspector 1996 II CLR 832,

(vi) Gurpreet Singh Bhullar v. Union of India 2006 I CLR 1091,

(vii) Shimoga and others v. Lokesh Reddy 2003 III CLR 126 and

(viii) Maharashtra Rajya Rashtriya Kamgar Sangh v. Kamgar Suraksha Sangh and others 2008 (1) Mh.L.J.344.

9. I have considered the submissions of the learned Advocates for the respective sides and have gone through the voluminous record and the judgments cited.

10. The following Sections of the 1971 Act have been referred to by the litigating sides in this matter:-

"Section 4 - Industrial Court -

(1) The State Government shall by notification in the Official Gazette, constitute an Industrial Court.

(2) The Industrial Court shall consist of not less than three members, one of whom shall be the President.

(3) Every member of the Industrial Court shall be a person who is not connected with the complaint referred to that Court, or with any industry directly affected by such complaint:

Provided that, every member shall be deemed to be connected with a complaint or with an industry by reason of his having shares in a company which is connected with, or likely to be affected by, such complaint, unless he discloses to the State Government the nature and extent of the shares held by him in such company and in the opinion of the State Government recorded in writing, such member is not connected with the complaint, or the industry.

(4) Every member of the Industrial Court shall be a person who is or has been a Judge of a High Court or is eligible for being appointed a Judge of such Court:

Provided that, one member may be a person who is not so eligible, if he possesses in the opinion of the State Government expert knowledge of labour or industrial matters.

Section 5 - Duties of Industrial Court -

It shall be the duty of the Industrial Court,-

(a) to decide an application by a union for grant of recognition to it;

(b) to decide an application by a union for grant of recognition to it in place of a union which has already been recognised under this Act;

(c) to decide an application from another union or an employer for withdrawal or cancellation of the recognition of a union;

(d) to decide complaints relating to unfair labour practices except unfair labour practices falling in Item 1 of Schedule IV;

(e) to assign work, and to give directions, to the Investigating Officers in matters of verification of membership of unions, and investigation of complaints relating to unfair labour practices;

(f) to decide references made to it on any point of law either by any civil or criminal court; and

(g) to decide appeals under section 42.

Section 8 - Investigating Officers-

The State Government may, by notification in the Official Gazette, appoint such number of Investigating Officers for any area as it may consider necessary, to

assist the Industrial Courts and Labour Courts in the discharge of their duties.

Section 9 - Duties of Investigating Officers-

(1) The Investigating Officer shall be under the control of the Industrial Court, and shall exercise powers and perform duties imposed on him by the Industrial Court.

(2) It shall be the duty of an Investigating Officer to assist the Industrial Court in matters of verification of membership of unions, and assist the Industrial and Labour Courts for investigating into complaints relating to unfair labour practices.

(3) It shall also be the duty of an Investigating Officer to report to the Industrial Court, or as the case may be, the Labour Court the existence of any unfair labour practices in any industry or undertaking, and the name and address of the persons said to be engaged in unfair labour practices and any other information which the Investigating Officer may deem fit to report to the Industrial Court, or as the case may be, the Labour Court.

Section 11 - Application for recognition of union-

(1) Any union (hereinafter referred to as the "applicant-union") which has for the whole of the period of six calendar months immediately preceding the calendar month in which it so applies under this section a membership of not less than thirty per cent of the total number of employees employed in any undertaking may apply in the prescribed form to the Industrial Court for being registered as a recognised union for such undertaking.

(2) Every such application shall be disposed of by the Industrial Court as far as possible within three months from the date of receipt of the application, where a group of concerns in any industry which is notified to be one undertaking for which recognition is applied for is situated in the same local area; and in any other case, within four months.

Explanation.- "Local area" for the purposes of this subsection means the area which the State Government may, by notification in the Official Gazette, specify in the notification.

Section 12 - Recognition of Union -

(1) On receipt of an application from a union for recognition under section 11 and on payment of the prescribed fees, not exceeding rupees five the Industrial Court shall, if it finds the application on a preliminary scrutiny to be in order, cause notice to be displayed on the notice board of the undertaking, declaring its intention to consider the said application on the date specified in the notice, and calling upon the other union or unions, having membership of employees in that undertaking and the employers and employees affected by the proposal to show cause, within a prescribed time, as to why recognition should not be granted to the applicant union.

(2) If, after considering the objections, if any, that may be received under sub-section (1) from any other union (hereinafter referred to as "other union") or employers or employees, if any, and if after holding such enquiry in the matter as it deems fit, the Industrial Court comes to the conclusion that the conditions requisite for registration specified in section 11 are satisfied, and the applicant-union also complies with the conditions specified in section 19 of this Act the Industrial Court shall, subject to the provisions of this section, grant recognition to the applicant-union under this Act, and issue a certificate of such recognition in such form as may be prescribed.

(3) If the Industrial Court comes to the conclusion, that any of the other unions has the largest membership of employees employed in the undertaking, and the said other union has notified to the Industrial Court its claim to be registered as a recognised union for such undertaking, and if it satisfies the conditions requisite for recognition specified in section 11, and also complies with the conditions specified in section 19 of this Act, the Industrial Court shall, subject to the provisions of this section, grant such recognition to the other union, and issue a certificate of such recognition in such form as may be prescribed.

Explanation.- For the purpose of this sub-section, the other union shall be deemed to have applied for recognition in the same calendar month as the applicant-union.

(4) There shall not, at any time, be more than one recognised union in respect of the same undertaking.

(5) The Industrial Court shall not recognise any union, if it is satisfied that the application for its recognition is not made bona fide in the interest of the employees, but is made in the interest of the employer, to the prejudice of the interest of the employees.

(6) The Industrial Court shall not recognise any union, if, at any time, within six months immediately preceding the date of the application for recognition, the union has instigated, aided or assisted the commencement or continuation of a strike which is deemed to be illegal under this Act.

Section 13 - Cancellation of recognition and suspension of rights -

(1) 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; or

(ii) that the membership of the union has, for a continuous period of six calendar months, fallen below the minimum required under section 11 for its recognition :

Provided that, where a strike (not being an illegal strike under the Central Act) has extended to a period exceeding fourteen days in any calendar month, such month shall be excluded in computing the said period of six months:

Provided further that, the recognition of a union shall not be cancelled under the provisions of this sub-clause, unless its membership for the calendar month in which show cause notice under this section was issued was less than such minimum ; or

(iii) that the recognised union has, after its recognition, failed to observe any of the conditions specified in section 19; or

(iv) that the recognised union is not being conducted bona fide in the interest of employees, but in the interests of employer to the prejudice of the interest of employees ; or

(v) that it has instigated, aided or assisted the commencement or continuation of a strike which is deemed to be illegal under this Act; or

(vi) that its registration under the Trade Unions Act, 1926, (XVI of 1926) is cancelled; or

(vii) that another union has been recognised in place of a union recognised under this Chapter.

(2) The Industrial Court may 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, that it has committed any practise which is, or has been declared as, an unfair labour practise under this Act:

Provided that, if having regard to the circumstances in which such practise has been committed, the Industrial Court is of opinion, that instead of cancellation of the recognition of the union, it may, suspend all or any of its rights under sub-section (1) of section 20 or under section 23, the Industrial Court may pass an order accordingly, and specify the period for which such suspension may remain in force.

Section 14 - Recognition of other Union -

(1) If any union makes an application to the Industrial Court for being registered as a recognised union in place of a recognised union already registered as such (hereinafter in this section referred to as the "recognised union") for an undertaking, on the ground that it has the largest membership of employees employed in such undertaking, the Industrial Court shall, if a period of two years has elapsed since the date of registration of the recognised union, call upon the recognised union by a notice in writing to show cause, within thirty days of the receipt of such notice, as to why the union now applying should not be recognised in its place. An application made under this sub-section shall be accompanied by such fee not exceeding rupees five as may be prescribed:

Provided that, the Industrial Court may not entertain any application for registration of a union, unless a period of one year has elapsed since the date of disposal of the previous application of that union.

(2) If, on the expiry of the period of notice under subsection (1), the Industrial Court finds, on preliminary scrutiny, that the application made is in order, it shall cause notice to be displayed on the notice board of the undertaking, declaring its intention to consider the said application on the date specified in the notice, and calling upon other union or unions, if any, having membership of employees in that undertaking, employer and employees affected by the proposal to show cause within a prescribed time as to why recognition should not be granted.

(3) If, after considering the objections, if any, that may be received under subsection (2) and if, after holding such enquiry as it deems fit (which may include recording of evidence of witnesses and hearing of parties), the Industrial Court comes to the conclusion that the union applying complies with the conditions necessary for recognition specified in section 11 and that its membership was, during the whole of the period of six calendar months immediately preceding the calendar month in which it made the application under this section, larger than the membership of the recognised union, then the Industrial Court shall, subject to the provisions of section 12 and this section, recognise the union applying in place of the recognised union, and issue a certificate of recognition in such form as may be prescribed.

(4) If the Industrial Court comes to the conclusion that any of the other unions has the largest membership of employees employed in the undertaking, and such other union has notified to the Industrial Court its claim to be registered as a recognised union for such undertaking, and if, such other union satisfies the conditions requisite for recognition under section 11 and complies with the conditions specified in section 19 of this Act, the Industrial Court shall grant such recognition to such other union, and issue a certificate of such recognition in such form as may be prescribed.

Explanation.- For the purpose of this sub-section, the other union shall be deemed to have applied for recognition in the same calendar month as the applicant-union.

(5) Every application under this section shall be disposed of by the Industrial Court as far as possible, within three months, from the date of receipt of the application, where a group of concerns in any industry which is notified to be one undertaking for which recognition is applied for is situated in same local area; and in any other case, within four months. Explanation.- "local area" for the purposes of this subsection means the area which the State Government may, by notification in the Official Gazette, specify in such notification.

Section 15 - Application for re-recognition-

(1) Any union the recognition of which has been cancelled on the ground that it was recognised under a mistake or on the ground specified in clause (ii) of section 13, may, at any time after three months from the date of such cancellation, and on payment of such fees as may be prescribed apply again to the Industrial Court for recognition; and thereupon the provisions of sections 11

and 12 shall apply in respect of such application as they apply in relation to an application under section 11.

(2) A union, the recognition of which has been cancelled on any other ground, shall not, save with the permission of the Industrial Court, be entitled to apply for re-recognition within a period of one year from the date of such cancellation."

11. The petitioner has contended that Section 13 is silent about who should make an application for cancellation of the recognition of a Union. Contention is that the employer can not file an application under Section 13. Reliance is placed on the judgment of this Court in the matter of Fashion Production Mazdoor Sabha (supra), to support the case of the petitioner. This Court in paragraph Nos.8 and 9 of the said judgment has observed as under:-

"8. At the first blush, the arguments of Mr. Bandekar appear to be quite attractive but in the ultimate analysis of the problem I find no substance in them. It is no doubt true that Section 12 and Section 14 envisage that in the matter of granting recognition to a union, employees' objections, if any, to a show-cause notice have to be considered by the Industrial Court but that would not mean that even when a question of cancellation of recognition of a union arises such employees have a right to initiate proceeding under Section 13. It is important to note that both under Section 12 and 14; employees are not the parties. Again, under Section 11 an application for recognition is to be filed by a "trade union" and not by an "employee" or "employer", though after receipt of such an application, a show-cause notice is to be displayed on the notice board of the Undertaking calling upon the other unions, if any, and the employees and employer to show-cause within a prescribed time as to recognition should not be granted to the applicant union. Giving a right to apply for recognition stands on a different footing than issuing a show cause notice and considering the objections, if any, raised by either the employer or employees. The employer or employees affected are not given any right to seek recognition qua a particular union. Seeking such recognition by filling an application is restricted to a trade union only. Section 12 deals with the recognition of a union and Section 13 deals with its cancellation. Therefore, the application contemplated by Section 13 can be by a union only and not by individual employees. This seems to be the reason why in Section 13 it is nowhere stated as to who can apply for cancellation of recognition. The various rules such as 4, 5, 6 and 7 framed under the Act respectively lay down the form of application by any union for recognition, fees to be paid for such recognition, the prescribed period of show-cause notice and the form of the certificate of recognition. These rules, when read with Section 12, abundantly make it clear that recognition can be claimed by a union. A necessary corollary of this would be that cancellation of it could also be claimed by a union and not by individual employee or employees. Any other interpretation will result in absurdity. The disastrous consequences apprehended by Mr. Bandekar, if the recognised union operate in collusion with the employer against the interest of the employees, can be well looked after by any other union by filing an

application for de-recognition of such a union.

9. As said earlier, the object for which the MRTU & PULP Act was enacted was to achieve industrial peace and harmony by recognising trade unions for facilitating collective bargaining. We have, therefore, to read Section 13 in harmony with other provisions of the Act as a whole. The cardinal principle of interpretation of statutes is that unreasonable or artificial or anomalous constructions have to be avoided and if two constructions are possible, the one which is more reasonable to achieve the object sought to be achieved by the Act has to be chosen by the Court. The Court has to read the legislation as a whole so as to unfold the real intention of the legislature. We may here usefully quote a passage from "Principles" of Statutory Interpretation" by G.P. Singh, 3rd Edition, at page 104:-

"that a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the Courts to avoid "a head on clash" between the sections of the same Act and, whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with other".

The Supreme Court in the case of Philips India Ltd. v. Labour Court, Madras and Ors.

"No canon of statutory construction is more firmly established than that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction *ex visceribus actus*. This rule of statutory construction is so firmly established that it is variously styled as "elementary rule".

It is pertinent to note that Chapters III and IV of the MRTU & PULP Act which provide for recognition of unions and obligations and rights of recognised unions and other unions speak in terms of unions and unions alone and make no provision for the participation by the employees individually. As a matter of fact, individual employees are specifically prohibited from participating in certain proceedings. Thus Section 20(2)(b) in Chapter IV provides that when there is a recognised union for any Undertaking, no employee shall be allowed to appear or act or be allowed to be represented in any proceedings under the Industrial Disputes Act, 1947 (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration), except through the recognised union and the decision arrived at, or order made, in such proceeding, shall be binding on all the employees in such Undertaking. Section 21 further provides that no employee in an Undertaking to which the provisions of the I.D. Act, 1947, for the time being apply, shall be allowed to appear or act or allowed

to be represented in any proceedings relating to unfair labour practices specified in items 2 and 6 of Schedule IV to this Act except through the recognised union. It is only when there is no recognised union to appear that an employee himself may appear or act in any proceeding relating to any such unfair labour practices. Further Sub-section (2) of Section 21 provides that notwithstanding anything contained in the BIR Act, 1946, no employee in any industry to which the provisions of the said Act, for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceeding relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the representatives of the employees entitled to appear under Section 30 of that Act. These provisions make it crystal clear that the intention of the legislature was that individual employees had no role to play in the matter of certain proceedings. Further, the unfair labour practices scheduled in this Act are the unfair labour practices on the part of the "employers" and "trade unions" and not on the part of the "employees" which also shows that the legislature did not envisage that employees individually can indulge in unfair labour practices which had to be prevented. Therefore, initiation of proceeding by individual employees under Section 13 was not thought of by the legislature. If the interpretation put forward by Mr. Bandekar is accepted, it would destroy industrial peace and create anarchical conditions in the industrial field. That is so because sometimes some unscrupulous employers and sometimes some disgruntled and frustrated trade union leaders in order to harass the recognised unions may instigate individual employees to make applications for cancellation of recognition with the result that recognised unions would not be able to carry out their duties as bargaining agents or representatives of the employees. This would defeat the very object sought to be achieved by the Act. It is very important to keep in one's mind, while dealing with this controversy, that apart from the disquieting feature of trade union leadership issue there is also a problem of multiple rival unionism. Intra-union and inter-union rivalry has an evil effect on healthy trade union activities adversely affecting the process of collective bargaining. In the teeth of these stark realities on the industrial scenario, can we reasonably construe Section 13 that the legislature had intended to give right to every employee to make an application for cancellation of the recognition of a trade union ? I do not think so. On the contrary, I strongly feel that such could not be the intention of the legislature."

12. I do not find that the view taken by this Court in Fashion Production case (*supra*) would be of any assistance to the petitioner for three reasons.

Firstly, that this Court has only considered Sections 12, 13 and 14 while deciding the matter before it and has concluded that only a "trade union" can file an application under Section 13 or Section 14 of the 1971 Act.

Secondly, Section 5 was not brought to the notice of this Court. As such, the duties of the Industrial Court to decide an application filed by an employer for withdrawal or cancellation of the recognition of a union under Section 5(c), were

not brought to the notice of this Court.

Thirdly, in Fashion Production case (supra), this Court has not come to a conclusion that the employer cannot file an application under Section 13 for seeking cancellation of recognition of a union. Section 5(c), which defines the duties of the "Industrial Court", statutorily empowers the "Industrial Court" to decide an application from another union or an employer for withdrawal or cancellation of the recognition of the Union. When the provision itself is vocal, it needs no debate that the employer can file an application for seeking cancellation of the recognition or its withdrawal.

13. The petitioner has questioned the authority of the Deputy General Manager is in filing the application for cancellation of recognition on the plea that since the "Manager" is defined under Section 2(d) of the Standing Orders Act, the DGM, who is not the Manager, cannot file such an application. It is proved through oral and documentary evidence that the respondent/factory is operated by the Board of Directors. A resolution was passed by the Board empowering the Deputy General Manager to file the said application. The said resolution has been proved through documentary evidence.

14. In the judgment of the Honourable Supreme Court in the matter of United Bank (supra), the Honourable Apex Court, in paragraph Nos. 8 to 11, has observed as under:-

"8. In this appeal, therefore, the only question which arises for consideration is whether the plaint was duly signed and verified by a competent person.

9. In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the CPC, to ensure that injustice is not done to any party who has a just case as far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6, Rule 14 of the CPC a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29, Rule 1 of the CPC, therefore, provides that in a suit by or against a corporation the secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6, Rule 14 together with Order 29, Rule 1 of the CPC it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and hors Order 29, Rule 1 of the CPC, as a company is a juristic entity, it can duly authorise any

person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6, Rule 14 of the CPC. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The Court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.

11. The courts below could have held that Sh. L.K. Rohatgi must have been empowered to sign the plaint on behalf of the appellant. In the alternative it would have been legitimate to hold that the manner in which the suit was conducted showed that the appellant bank must have ratified the action of Sh. L.K. Rohatgi in signing the plaint. If, for any reason whatsoever, the courts below were still unable to come to this conclusion, then either of the appellate courts ought to have exercised their jurisdiction under Order 41, Rule 27 (1)(b) of the CPC and should have directed a proper power of attorney to be produced or they could have ordered Sh. L.K. Rohatgi or any other competent person to be examined as a witness in order to prove ratification or the authority of Sh. L.K. Rohatgi to sign the plaint. Such a power should be exercised by a court in order to ensure that injustice is not done by rejection of a genuine claim."

15. It is settled law that in the case of termination or dismissal or discharge etc. of an employee, the "appointing authority" is the "terminating authority". The issue of an officer duly authorised in the matter for filing or defending the company in litigation, is not required to be viewed as strictly as is in the case termination when it comes to the power of the terminating authority.

16. In the matter of J.K. Industries Ltd. (supra), this Court has considered the functioning of the company and the power of the Board of Directors in delegating authority to an employee. It is concluded that despite the delegation of authority, the ultimate control of the company vests in the company itself. Paragraph Nos. 14 (marked portion) and 15 read as under:-

"14.The argument of the learned counsel for the appellants/petitioners that the expression "person" in Section 2(n) implies only an individual does not bear scrutiny, when construed in the case of a company, a firm of partners or an association of persons. Where it is the company which owns or runs such a factory, it is the company which owns or runs such a factory, it is the company which has the ultimate control over the affairs of the factory, and, therefore it would be the company would be the occupier of that factory. However, since a company is a legal abstraction, it can act only through its agents who in fact control and determine the management and are the centre of its personality. Such agents are generally called the directors being the "directing mind and will"

of the company. The deeming fiction under proviso (ii), therefore, only clarifies the position where company is the occupier of the factory. The legislature by providing the deeming fiction under proviso (ii) did not detract from the generality of the main provision under Section 2(n), but only clarified it. The directors are not the employees or servants of the company. They manage, control and direct the business of the company as "owners" (Section 291 of the Companies Act). The Directors are often referred to as the "alter ego" of the company. Where the company owns or runs a factory, it is the company which is in the ultimate control of the affairs of the factory through its Directors. An employee or officer of the factory or of the company, even if authorised by the board of directors by a resolution to be a person "in the ultimate control of the affairs of the factory" cannot be so. Such an employee only carries out orders from above and it makes no difference that he has been given some measure of discretion also and has supervisory control. He can at best be treated to be in the immediate control of the affairs of the factory or having day to day control over the affairs of the factory, the ultimate control being retained by the company itself. The legislature did not designedly use the expression immediate or day to day or supervisory control instead of ultimate control in the main provision of Section 2(n). The word "ultimate" in common parlance means last or final. The Oxford Advanced learner's Dictionary of Current English Encyclopedic Edition (1992), defines the word "ultimate" to mean :

"beyond which no other exists or is possible; last or final; from which every thing is derived; basic or fundamental; that cannot be surpassed or improved upon; greatest etc."

According to Collins Dictionary of the English Language the word "ultimate" has been defined as:

"last; final; elemental; fundamental; basic or essential; highest; furthest or greatest thing."

According to Black's Law Dictionary (Sixth Edition), the word "ultimate means:

"at last, finally or at the end....."

17. In the light of the above, I do not find any reason to entertain the grievance of the petitioner that the Deputy General Manager could not have filed the application and hence the application was untenable in law.

18. The petitioner has raised a serious grievance about the resignation of membership by the workers. Shri Shahane has strenuously submitted that the resignation of membership is not known to the petitioner/Union and same is not proved. There is no evidence that the individual members tendered their resignation to the Union and hence the filing of the copies of the resignation with the management is of no consequence and it needs to be presumed that none of the members had resigned from their membership.

19. I find that the Investigating Officer was directed to carry out an inspection/

investigation with regard to the factum of the membership of the Union. So also the petitioner/Union had filed Complaint (ULP) No. 61 of 2015, raising a grievance that the management is compelling the members of the petitioner/Union to resign from the Union. On the one hand, the filing of the said complaint indicates that the Union was aware that it's members were resigning. On the other hand, the Investigating Officer has filed his report indicating "No Membership" with the petitioner.

20. The first report of the Investigating Officer in Complaint (ULP) No. 61 of 2015 indicates that the investigation was carried out with due notice to the litigating sides, on 29.2.2016. The Union was represented by Shri Gaikwad, who submitted a letter on the said date and thereafter expressed his reluctance in participating in the investigation. The Investigating Officer noticed that 242 workers were members of the Union as in May 2015. The said workers had resigned from the Union by tendering their resignation. Out of the 242 members, 17 had left/retired from service. The workers informed the Investigating Officer that they had submitted their resignations with the Union office situated in the factory premises and by the end of May 2015, they had all resigned from the Union. No force or pressure or duress was exerted upon them. This report, therefore, indicates that the membership of the petitioner/Union had in fact fallen to "Zero" and the affairs of the Union were managed by their representatives from Mumbai.

21. In the report filed by the IO, in the application for cancellation of recognition proceedings indicates that after individual interaction and scrutiny, it is revealed that the membership of the petitioner/Union had fallen to "Zero" from June, 2015. It is noteworthy that the monthly Union subscription was deducted by the management on the request of the Union for the whole calendar year 2015, from the monthly salary of the members in January/February 2015, in one stroke.

22. Copies of the resignation letter have been placed on record, which indicate the signature of the employee, his left hand thumb impression as well as the signature of a witness. Though the petitioner contends that these workers continued to be it's members, the petitioner/Union did not examine even a single witness before the Industrial Court in these proceedings. It is further conceded that from January 2016, the membership subscription of not a single worker has been deposited in the accounts of the petitioner. Exhibit C-4/10 is the covering letter, by which the management received copies of the membership resignation of the individual workers.

23. Even if the aspect of resignation of the Union is overlooked, it was clearly established before the Industrial Court that not a single worker stated to the Investigating Officer that he is the member of the petitioner/Union or that the management is exerting pressure on the workers to resign from the petitioner/Union. So also, the recognised Union did not produce a single witness before the Industrial Court to prove it's membership. It could have filed individual affidavits of the workers duly sworn in the proceedings so as to establish that they are the members of the recognised Union. It is quite conspicuous that the recognised

Union could not produce a single witness in order to establish it's membership.

24. Shri Shahane has strenuously contended that it was not proved before the Industrial Court that the resignation letters had reached the Mumbai office of the recognised Union. I find from the evidence recorded before the Industrial Court that the erstwhile leader of the recognised Union - Kisan Muktaji Darkunde had identified all the resignation letters placed on record and has contended that none of these workers continued to be the members of the recognised Union.

25. It also cannot be ignored that this Court, by its judgment dated 23.10.2015 in Writ Petition No. 9911 of 2015 in between the same litigating sides, had sustained the direction of the Industrial Court by which the Investigating Officer was directed to verify, whether the employees of the respondent/company had resigned from the membership of the recognised Union, voluntarily or otherwise. In this backdrop, the Investigating Officer had carried out the investigation and had submitted his report indicating that the recognised Union did not have the membership of a single worker from June 2015.

26. Shri Shahane has placed reliance upon the judgment of this Court in the Gammon India Ltd. case (supra), to contend that in matters of cancellation of recognition, what is required to be taken into account is the total number of employees of the company or the concern for which recognition was granted and the membership of the recognised Union therein and only when such membership of the recognised Union falls below 30% continuously for six months in that concern, the recognition can be cancelled. Shri Shahane has boldly stated that the total workers working in the respondent/factory were more than 900. Learned Advocate for the respondent submits that if the said contention is accepted, 30% of the membership of the recognised Union would be equal to 270 employees and the recognised Union never had 270 workers as its members any time in the past.

27. Considering the above submissions, even from this point of view, the membership of the recognised Union was never 30% even at the time of grant of recognition, much less thereafter. Nevertheless, the membership of the petitioner Union, presuming that there are only 242 workers in employment of the respondent, has fallen below 30% for a period of six consecutive calendar months, prior to filing of the application under Section 13.

28. The learned Division Bench of this Court in the case of Maharashtra Rajya Rashtriya Kamgar Sangh case (supra) has observed in paragraph Nos.2 and 5 as under:-

"2. The petitioner herein aggrieved from the said order has filed the present writ petition under Article 226 of the Constitution of India primarily on the ground that the order passed is erroneous and based on no evidence. Further that the members who were holding common membership have not been excluded which are to the extent of 30 per cent and as such the entire proceedings are vitiated and the impugned order is liable to be quashed. While attacking the order in

question, it is also argued that in respect of 146 members of the petitioner union who are stated to have resigned, their resignation was not proved and just two witnesses were examined on the said point.

5. Reliance on behalf of the petitioner was placed upon the judgment of the Supreme Court in *Automobile Products of India Employees Union v. Association of Engineering Workers, Bombay and Ors.*(1990) II LLJ 395 SC to contend that the procedure prescribed for determination of majority has to be followed in pith and substance and exclusive membership of the contesting unions continuously over the specified period has to be the basis, while overlapping membership being ignored. In that case, the Supreme Court was concerned with a case where the Industrial Court had directed secret ballot method for determining the majority with the consent of the parties. The Court held that despite consent of the parties, this method, being opposed to the specific provisions of the Act, could not be accepted and the illegality was incurable, of course, the overlapping membership was also stated to be impermissible. These established principles of law hardly need any discussion in the facts and circumstances of the present case. In the present case, the Industrial Court had appointed an Investigating Officer on whose report the parties had filed comments, where after the Industrial Court had decided the application in favour of respondent No. 1 at the first instance. Even for the second time when it passed the impugned order, 146 members of the petitioner union had resigned and had become members of the first respondent Union. To prove these resignations, two witnesses were examined and the effect of the resignations had taken effect during the relevant period. Section 3(11) of the Act defines "member" as a person who is an ordinary member of a Union and has paid a subscription to the Union of not less than 50 paise per calendar month. The proviso further clarifies that no person shall at any time be deemed to be a member, if his subscription is in arrears. This definition would in no way exclude the effect of the resignations by members of the Union. Payment of subscription and receipts issued for such purpose are the primary evidence of membership. They should be members for the relevant period but where the members have resigned from the primary membership of the Union of which they were earlier members, it would have its effect depending on the facts and circumstances of the case. In accordance with the provisions of Section 13 of the Act, the recognition of the Union would be liable to be cancelled, after holding an enquiry, if the membership of the Union, for a continuous period of six calendar months, falls below the minimum required under Section 11 of the Act. The expression "resignation" has been explained by the Supreme Court in the case of *Moti Ram v. Param Dev and Anr.* (1993) II LLJ 629 SC in the following words:

"Resignation means the spontaneous relinquishment of one's own right and in relation to an office; it connotes the act of giving up or relinquishing the office. In the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment. The act of relinquishment may take

different forms or assume a unilateral or bilateral character, dependent on the nature of the office and the conditions governing it."

29. As such, the payment of subscription and the receipts issued for membership would be the primary evidence of the membership. In the instant case, the annual membership was collected from the 242 members in one stroke in January/February 2015. The report of the Investigating Officer evidences the resignation of all members of the recognised Union till 30.5.2015 and that there was not a single member with the recognised Union from June 2015 onwards. Not a single member of the recognised Union appeared before the Industrial Court to lead evidence. In this backdrop, it was well established by the respondent that the membership of the recognised Union, in effect, has reduced to "Zero".

30. In the light of the above, I do not find that the impugned judgment of the Industrial Court is perverse or erroneous. I do not find any merit in this petition and the same is, therefore, dismissed.

31. Rule is discharged. No order as to costs.