

(2018) 01 BOM CK 0217
In the Bombay High Court
Case No : 78 of 2013

Bajaj Auto Limited

APPELLANT

Vs

State of Maharashtra & Ors

RESPONDENT

Date of Decision : 31-01-2018

Acts Referred:

Constitution of India, Article 19, Article 19(1)(c) - Protection of certain rights regarding freedom of speech, etc - Protection of certain rights regarding freedom of speech, etc
Trade Unions Act, 1926, Section 10, Section 10(b) - Cancellation of registration - Cancellation of registration

Citation : (2018) 01 BOM CK 0217

Hon'ble Judges : T.V. Nalawade, Sunil K. Kotwal

Bench : Division Bench

Advocate : K.M. Naik, ?Sachin V. Dankh, Lalit B. Deshmukh, R.V. Dasalkar T.K. Prabhakaran, S.B.? Rajebhosale

Final Decision : Disposed Of

Judgement

1. The appeal is filed to challenge the decision given by the learned Single Judge of this Court in Writ Petition No.2596/2011 and also the order made by the second respondent, the Registrar appointed under the Trade Unions Act, 1926 on 13-12-2010. The application made by the present appellant, a company on 17-3-2007, for cancellation of the certificate of registration granted to respondent No.3, a Trade Union on 15-12-2003 under the provisions of the Trade Unions Act, 1926 (hereinafter

referred to as "the Act") is rejected by the Registrar. The order of the Registrar is confirmed by the learned Single Judge of this Court. Both the sides are heard.

2. In the application made by the Trade Union, respondent No.3 for registration it was contended that the Trade Union was to work for the workers from all industries of Maharashtra. The application was signed by 8 persons, who included 4 office bearers. It was informed to the Registrar that as on the date of the application the Trade Union had 1525 members. The applicants on the application other than the office bearers were also members of the Trade Union. In Schedule "A" information was given that the members were the ex employees of the present appellant-company. In Schedule "B" it was informed that litigation was pending between the members and the appellant company.

3. The submissions made in the present proceeding and also which were made before the learned Single Judge and also the Registrar show that it was admitted for the Trade Union in the past before the Registrar and the learned Single Judge that the Trade Union was formed by the employees who were terminated by the appellant-company and it was working for those employees only.

4. The appellant-company had prayed for invoking the powers given under section 10(b) of the Act and cancel the registration certificate granted in favour respondent No.3. The main contentions of the appellant are as follows :-

(i) Under section 4(1) of the Act, Trade Union needs to have at least ten per cent

or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making application for registration but respondent No.3 was not having single member in employment either with the appellant-management or with other establishment on the date of registration.

(ii) In the application submitted for registration the names of only eight members were given and these eight members were former temporary employees of the appellant-company and on the date of application not a single member of the Trade Union was employed in the establishment with which the Trade Union was claiming to be connected. All the members who were said to be connected with the Trade Union were already terminated by the appellant management prior to the date of application filed for registration.

(iii) As per the provision of section 22(2) of the Act, two-third of the office bearers of the Trade Union need to be the employees actually working in the factory or establishment with which the Union claimed to be legally connected but not a single office bearer of the Trade Union was on the establishment of the appellant-company on the date of the application filed for registration. In annual returns submitted by the Trade Union for the year 2003, the total number of members was shown as 410 but in the annual returns submitted for the year 2004 the number was shown as 1525.

Many other contentions were made but the main contention was as follows :

"Neither the office bearers nor the members of the Trade Union were engaged or employed by the appellant-company on the date of the application filed for registration."

5. The submissions made for the respondent -

Trade Union in this Court and also before the learned

Single Judge and before the Registrar show that the

aforesaid contentions were contested by Trade Union by

making following two contentions :-

(i) The appellant has no locus standi and the Registrar could not have entertained the application for cancellation of registration; and,

(ii) The office bearers and other members of the Trade Union were ex-employees of the appellant- company and on the date of the application filed for registration, references filed by them to challenge the orders of termination were pending and so they need to be treated as the employees for the purpose of registration of Trade Union.

LOCUS STANDI

6. For considering this objection of the Trade

Union the provision of section 10 of the Act needs to be

seen. The provision is as under :-

"10. Cancellation of Registration : A certificate of registration of Trade Union may be withdrawn or cancelled by the Registrar -

(a) on the application of the Trade Union to be verified in such manner as may be prescribed, or

(b) if the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or that the Trade Union has ceased to exist or has wilfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision, or has rescinded any rule providing for any matter, provision for which is required by section 6 ."

7. The learned counsel for the Trade Union placed

reliance on some observations made by the Apex Court in

the case reported as 2015 (3) LJSOFT (S.C.) 204 = 2015

(2) AIR BOM R (S.C.) 278 (R.G. D'souza vs. Poona

Employees Union & Anr). The facts of this reported case

show that the person who wanted the cancellation of the

registration was the President of the Trade Union when

the application for registration was submitted. There was

some dispute between this Trade Union and another

Union like Bhartiya Kamgar Sena and it was pending

before the Industrial Court. He contended that the

registration was obtained by fraud, mistake or

misrepresentation. In view of the facts of that matter,

following observations were made by the Apex Court at

paragraph 15.

"15. As per Section 10 of the Act, the Certificate of Registration of a Trade Union may be withdrawn or cancelled by the Registrar of Trade Union either on application of a Trade Union inviting the attention of the Registrar of Trade Unions or the Registrar may suo moto take cognizance under the said section. There is no mention in the said provision about cancellation of Registration of Trade Union on application by any other person. The said section permits the Authority to

cancel the registration of the trade union if, it is obtained by fraud or mistake, but does not permit the Authority to cancel the certificate of registration if, the same is granted by mistake due to incorrect assessment or non- application of mind or mechanical act on the part of the Authority."

8. On the basis of the aforesaid observations the learned counsel for the Trade Union submitted that the point of locus standi was considered by the Apex Court and it was held that the person not named in section 10 has no locus standi to file application under section 10 .

9. On the aforesaid point the learned counsel for the appellant-company placed reliance on the decision of the Apex Court reported as AIR 1979 SC 734 (S.K. Gupta v. K.P. Jain). This case was decided by three Hon"ble Judges of the Apex Court when the case of R. G. D'souza was decided by two Hon"ble Judges of the Apex Court. In paragraph 16, the Apex Court has laid down that in view of the object behind and the wording of the Act when (authority like Registrar or) the Court can act suo moto, it is immaterial as to who drew the attention of the Court to a situation which necessitated the intervention of the (authority or the) Court. The facts of the reported case were different but the observations made by the Apex Court are clearly applicable for interpretation of the provisions like provision of section 10 of the Act. Provision of section 10(a) and (b) show that there is word "or" between clause (a) and clause (b) and it shows that if it is brought to the notice of the Registrar that the certificate was obtained by fraud or mistake or other circumstance mentioned in clause (b) of section 10 is in existence and the Registrar is satisfied about it then the certificate can be withdrawn or cancelled by the Registrar.

The learned counsel for the appellant-company placed reliance on some observations made by the learned Single Judge of Allahabad High Court in the case reported as 2008 (118) FLR 221 (M/s. Lohia Machines (LML) Karamchari Sangh v. Registrar, Trade Unions, State of U.P.). In that case also the relief of quashing of the registration certificate was claimed on the ground that the union was not fulfilling the requirements of law. The learned Single Judge considered the situation which will be created due to improper registration of Trade Union. Reliance is placed on one more decision reported as (1979) 1 LLJ 448 AP (Tirumala Tirupati Devasthanam vs Commissioner of Labour). The Division Bench of the Andhra Pradesh High Court in the situation where the employer was interested in getting cancellation of registration made observation that it cannot be said that the applicant had no locus standi to question the order of registration of the union by the Registrar if it was the contention that it was contrary to the provision of the Trade Unions Act . In the present matter also this Court holds that for considering the grounds raised by the appellant-company, the Registrar was entitled to entertain the application and so the appellant has the locus standi in the matter. Requirements for Registration of Trade Union / for cancellation of the registration :

10. In the Act the procedure for registration of a Trade Union is given and definition of Trade Union is given in section 2(h) . The definition runs as under:

2.(h) "Trade Union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and

employers or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions:

Provided that this Act shall not affect -

- (i) any agreement between partners as to their own business;
- (ii) any agreement between an employer and those employed by him as to such employment; or
- (iii) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft."

11. The aforesaid definition shows that all the persons employed in trade or industry are included in it and there is no restriction as such which can be found in any other labour legislature. The object clause shows that it is made to provide for the registration of Trade Unions and in certain respects to define the law relating to registered Trade Unions. These things need to be kept in mind for the decision of the present matter.

12. Under the Act Registrars are appointed and they are invested with the power of registration. Section 8 deals with registration and it runs as under :

"8. Registration.- The Registrar, on being satisfied that the Trade Union has complied with all the requirements of this Act, in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as maybe prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration."

13. The aforesaid provision shows that subjective satisfaction of the Registrar is involved but the action of the Registrar is apparently administrative action. For consideration of the matter, the Registrar is expected to consider as to whether the Trade Union has complied with all the requirements of the Act in regard to the registration and no other party is expected to be heard on that point at the time of registration. It can be said that

whether the Registrar had before him the material to ascertain as to whether the Trade Union had complied with all the requirements of the Act can be looked into subsequently under other provisions of the Act.

14. In sections 4 and 5 of the Act, the procedure is laid down for making application for registration. In the present matter there is no dispute that the description of the eight applicants given in the application was correct. In the proceeding filed for cancellation by the appellant-company it is admitted that all these persons were ex-employees of the company and so there is no need to go into details of the requirements given under section 5 of the Act. The provision of section 4 is as under :

"4. Mode of registration.- (1) Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act, with respect to registration, apply for registration of the Trade Union under this Act:

Provided that no Trade Union of workmen shall be registered unless at least ten per cent or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration:

Provided further that no Trade Union of workmen shall be registered unless it has on the date of making application not less than seven persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.

(2) Where an application has been made under sub- section (1) for the registration of a Trade Union, such application shall not be deemed to have

become invalid merely by reason of the fact that, at any time after the date of application, but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the Trade Union or have given notice in writing to the Registrar dissociating themselves from the application."

15. Section 4 shows that at least 7 members of a Trade Union need to sign on the application which is to be

made to the Registrar. The first proviso to section 4 shows that it needs to be shown by the applicants that at least ten per cent or one hundred of the workmen, whichever is less must be the members of the Trade Union, if it is in respect of a particular establishment or company with which it is connected. The second proviso shows that there is further restriction that the Trade Union must be having, on the date of the application, not less than seven persons as its members who are workmen engaged or employed in the establishment or industry with which it is connected. The provision of section 4(2) shows that it is with regard to the applicants who have signed on the application and in the circumstance mentioned in this provision the Registrar is not expected to treat the application as invalid if at least fifty per cent of the applicants are still insisting for registration by contending that they are still members of the Trade Union.

16. The learned counsel for the appellant submitted that the amendment made in the Act which came into force with effect from 9-1-2002 also needs to be considered as the requirements for registration are increased after this amendment. The provisions to which attention of this Court was drawn are section 9-A and section 22 . Sections 9-A and 22 run as under.

"9-A. Minimum requirement about membership of a Trade Union.- A registered Trade Union of workmen shall at all times continue to have not less than ten per cent or one hundred of the workmen, whichever is less, subject to a minimum of seven, engaged or employed in an establishment or industry with which it is connected, as its members."

"22. Proportion of office-bearers to be connected with the Industry.- (1) Not less than one half of the total number of the office-bearers of every registered Trade Union in an unorganised sector shall be persons actually engaged or employed in

an industry with which the Trade Union is connected.

Provided that the appropriate Government may, by special or general order, declare that the provisions of this section shall not apply to any Trade Union or class of Trade Unions specified in the order.

Explanation.- For the purposes of this section, "unorganised sector" means any sector which the

appropriate Government may, by notification in the Official Gazette, specify.

(2) Save as otherwise provided in sub-section (1), all office-bearers of a registered Trade Union, except not more than one-third of the total number of the office-bearers or five, whichever is less, shall be persons actually engaged or employed in the establishment or industry with which the Trade Union is connected.

Explanation.- For the purposes of this sub-section, an employee who has retired or has been retrenched shall not be construed as outsider for the purpose of holding an office in a Trade Union.

(3) No member of the Council of Ministers or a person holding an office of profit (not being an engagement or employment in an establishment or industry with which the Trade Union is connected), in the Union or a State, shall be a member of the executive or other office-bearer of a registered Trade Union."

17. The provision of section 22 sub section (2) of this section needs to be considered as the Trade Union is said from organized sector. It shows that at least two-third office bearers of the Trade Union need to be such persons who are actually engaged or employed in the establishment or industry with which the Trade Union is connected. It is already observed that the employer-appellant is not disputing that the office bearers were employees of the appellant though in the past. The explanation to section 22(2) needs to be kept in mind as for the purpose of section 22(2) an employee who is retired or who has been terminated shall not be construed as outsider for the purpose of holding office in a Trade Union. This provision is in addition to the requirements mentioned in section 4 of the Act as it relates to office

bearers. In the application, the contents of which are mentioned in section 5 of the Act, the names of office bearers are also required to be mentioned and so it can be said that even at the time of registration the condition or requirement given in section 22(2) of the Act applies along with the explanation given to it. Thus in respect of the office bearers who were mentioned in the application it can be said that they were covered by the explanation. For making these observations there are more reasons which are being quoted hereinafter. Similarly, the number of members of the Trade Union was given in the application year-wise and the appellant is not disputing that this figure was more than ten per cent of the total number of employees of the appellant - company.

18. It is not disputed that on the day when the application was filed for registration of the Trade Union the litigation was pending in the Industrial Court in the form of references filed in respect of the members of this Trade Union. They had specifically contended that the employer had adopted unfair labour practice and by using rotation system for about 10 years the employer had not made them permanent employees. They had claimed that their termination was illegal and they ought to have been absorbed as permanent employees.

19. It is not disputed that almost all the employees, who were terminated that way had worked for about 10 years as temporary workers and they succeeded in the proceedings filed by them. The first group of the employees succeeded, the claim of that group came to be finally allowed by the Apex Court in the year 2004. The

decision is reported as (2004) 9 SCC 488 (Bajaj Auto Ltd. v. Bhojane Gopinath D .). One more group succeeded in this Court in the year 2013 and the decision given by this Court was endorsed by the Apex Court in the case reported as (2013) 5 SCC 691 (Bajaj Auto Ltd. v. Rajendra Kumar Jagannath Kathar). Such complaints were filed right from the year 1997 and on the date of the application filed for registration some references were decided and some were pending. It was submitted that some references are still pending. Only due to the final orders made by the Apex Court in the matters, it can be said their entitlement to get reinstatement came to an end. As they succeeded to prove that the appellant had engaged in unfair labour practice they ought to have been absorbed they got compensation. Further period after the date of termination was considered by the Apex Court for calculating the lump sum amount of compensation. Thus, the rights of the employees were alive to get reinstatement as against the appellant-company and the rights came to an end only after the decision given by the Apex Court. It needs to be mentioned that some references are still pending. These circumstances need to be considered in the present matter as the appellant-company contended that these employees were terminated in the year 1997 and they were not engaged or employed on the establishment or the industry of the appellant-company on the relevant date. This Court holds that those terminated employees were workers for the purpose of this Act. In view of these circumstances, this Court holds that it cannot be said that the requirements of

aforesaid provision of the Act were not complied with on the relevant date and the authority, Registrar committed mistake in giving certificate of registration in favour of the respondent - Trade Union.

20. Section 10(b) shows that the Registrar needs to be satisfied that the certificate was obtained by fraud or mistake in a matter like present one. Relevant facts are already mentioned and they show that before the Registrar, the Trade Union had fairly admitted that they wanted to agitate the aforesaid issue and the litigation of those members was already pending. This Court has already referred the contentions made by the appellant-company before the Registrar in that regard. Thus, nothing was hidden from the Registrar by the Trade Union. Similarly, it cannot be said that the Registrar committed mistake either of fact or law in giving certificate of registration. The ground, mistake mentioned in section 10(b) appears to be connected to the act of Trade Union due to the wording "obtained" used in section 10(b) of the Act. But in view of the requirements of the registration mentioned above, it can be said that the Registrar is expected to consider the ground of mistake of law or fact if raised the matter even if it has no apparent connection with the act of Trade Union.

21. The learned Senior Counsel for the appellant heavily relied on the observations made by the learned Single Judge of Allahabad High Court in the case of M/s Lohia Machines (cited supra) on the present point also. The learned Single Judge of Allahabad High Court considered the provisions of sections 4, 8, 9, 22 and 9-A and

held that the laid off employees become unemployed and relationship of master and servant gets snatched and so the laid off employees cannot fall under the category of requisite number of employees who need to be members of Trade Union as per provisions of section 4 of the Act. The learned Single Judge further held that the explanation which is appended to section 22(2) of the Act is not there in section 4 of the Act and due to that reason the concession given in section 22(2) explanation, already quoted, is not available to the members who need to be employees on the date of application as per section 4 of the Act. For making such observations the learned Single Judge placed reliance on some observations made by the Hon"ble Apex Court in the case reported as Priya Laxmi Mills Limited v. Mazdoor Mahajan Mandal, Baroda (1977) 14 SCLJ 37 (SC). Some observations were made by the Apex Court in that case in relation to the interpretation of the provisions of the Industrial Disputes Act, other Act, and not in relation to the rights of the employees or ex-employees which can be found in the enactment like the present one to form association or Trade Union and get it registered. This right is connected with fundamental right of the citizens to form association or Trade Union and so the interpretation made in other context or other provisions of labour laws cannot be used for interpretation of the provisions of the Act. The object behind the Act is different. So, with due respect to the view taken by the learned Single Judge of the Allahabad High Court, this Court holds that those observations cannot be used against the respondent-Trade Union in the

present matter.

22. The provision of Article 19(1)(c) of the Constitution of India confers on all citizens a fundamental right to form association or union. By the Act the right to form Trade Union was recognised even before the Constitution of India came into force. The Constitution has given such right as a fundamental right to the citizens of this country. This aspect needs to be kept in mind while interpreting the provisions of the Act.

23. The relevant portion of Article 19 of the Constitution of India is as under:

"19. Protection of certain rights regarding freedom of speech, etc. - (1) All citizens shall have the right -

(a)

(b)

(c) to form associations or unions or co-operative societies.

(d)

(e)

(g)

(2)

(3)

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or

morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause."

In the case reported as (2011) 9 SCC 286 (A.P. Dairy Development Corporation Federation v. B. Narasimha Reddy), the Apex Court has discussed the aforesaid portion of Article 19 and it is observed by the Apex Court

that all the citizens have right to form association of their choice (underlined by us) voluntarily, subject to reasonable restrictions imposed by law. At para No.26 following observations are made :

"26. Therefore, the freedom guaranteed under Article 19(1)(c) is not restricted merely to the formation of the association, but to the effective functioning of the association so as to enable it to achieve the lawful objectives."

The aforesaid Article which gives fundamental right to the citizens of this country and the observations made by the Apex Court show that for effective functioning of the association/union if registration is necessary, registration needs to be allowed. In a case like the present one if registration is not allowed, the Union will not be able to achieve its lawful objectives. In the present matter it cannot be said that the objective of the Union which is already quoted was unlawful. When in section 22 of the Act the scope which is already discussed is also given, though it may be to the office bearers, it needs to be kept in mind that, that scope is much wider than what the members of the present Union are claiming. In view of these circumstances and as it is a fundamental right, it is difficult to accept that there should be strict compliance of the provision of section 4 of the Act. In the case like present one, ex-employees who want to enforce their right by proving that they were illegally terminated and they have right of reinstatement, they need to be treated as the employees, the persons described in section 4 of the Act.

24. From the practical angle also present case needs to be seen. If on the date of the registration of the present Union, there were two registered Unions but of

the permanent employees of the appellant-company, those registered Unions will not be interested to espouse the cause of the members of the respondent-Union. As already observed, the members of the respondent-Union cannot be compelled to join the Union of permanent employees who may have adverse interest against the temporary employees. The members of the respondent-Union had worked for more than 10 years as temporary employees and in view of the facts of the present matter there was no other alternative before them than to come together and form the Union like the respondent-Union. If the registration of such Union is denied, ordinarily it will amount to preventing such ex-employees from formation of Union which can act effectively. In view of the fact that it is a fundamental right of such persons, the construction which will give benefit to such persons needs to be accepted as that construction will be only the rational construction.

25. At the time of interpretation of the provisions of the Act it also needs to be kept in mind that after the registration, the Trade Union gets many rights under many labour laws like Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. It is required to be kept in mind that the employees or the ex-employees who cannot approach court for any reason can get the protection of such Trade Union as the Trade Union, which is registered, can take appropriate steps for protecting the rights and interests of employees and also ex-employees. Further, the Trade Union if registered can represent all the employees in such

undertaking. In section 10(b) of the Act it is provided that registration can be cancelled if Trade Union has ceased to exit or when the registered Trade Union fails to comply with the conditions laid down in the aforesaid provisions. For all these reasons this Court holds that the employer, in ordinary course, is not expected to object the registration of such Trade Union.

26. The learned counsel for the respondent, registered Trade Union placed reliance on some observations made by the Apex Court in the case reported as (2015 (2) AIR BOM R (S.C.) 278 (R.G. D'souza vs. Poona Employees Union & Anr) (cited supra). In this case the Apex Court has laid down in paragraphs 17, 18 and 19 that if certificate of registration is granted by the Registrar by mistake, due to incorrect assessment on non application of mind or mechanical act on the part of the authority, that circumstance is not covered by section 10 of the Act. There cannot be dispute over this proposition. In the present matter, different point is raised by the appellant like non fulfillment of conditions mentioned in sections 4 and 22 of the Act for allowing registration of Trade Union. In view of the aforesaid discussion this Court has no hesitation to observe that there are no merits in the Letters Patent Appeal and though the reasons are not exhaustively given by the learned Single Judge, the learned Single Judge has not committed any error in deciding the matter against the appellant. In the result, the appeal stands dismissed. Pending civil applications stand disposed of.