

(2002) 06 BOM CK 0042
In the Bombay High Court
Case No : C.A.J. W.P. No. 7257 of 2000

Bank Karmachari Sangh

APPELLANT

Vs

Assistant Registrar under Bombay Industrial Relations Act
and Others

RESPONDENT

Date of Decision : 13-06-2002

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 16, 23

Citation : (2002) 95 FLR 1014 : (2002) 3 LLJ 810

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : S.M. Dharap, for the Appellant; N.D. Buch and Bina Dholakia for Respondent No. 2 and Arun H. Palekar, for the Respondent

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—The petitioner is a trade union registered under the Trade Unions Act, 1926 and also registered as a representative and approved union under the provisions of the Bombay Industrial Relations Act, 1946 for the Co-operative Banking Industry in the local area of Latur District. The respondent No. 2 union filed an application before the Registrar under the B.I.R. Act on February 2, 1998 for cancellation of registration of the petitioner under Sections 16 and 23 and simultaneously seeking its own registration as a representative and approved union in the place of the petitioner union. The application was decided by the Assistant Registrar on June 24, 1998 cancelling the registration of the petitioner union and granting the application of the respondent union for its getting registered in the place of the petitioner union as a representative and approved union for the banking industry for all the local area of Latur district. The petitioner was aggrieved by the said order and, therefore, preferred an appeal before the Industrial Court as provided u/s 20 of the Act. By an order dated November 20, 1998, the Industrial Court dismissed the said appeal filed by the petitioner union. The petitioner union carried the matter before this Court by

filing a writ petition which was numbered as W.P. 724 of 1999. The Division Bench of this Court was pleased to grant rule on March 15, 1999 and interim orders restraining the respondent union from functioning as a representative and the approved union. It appears that the said petition was finally heard and decided on April 25, 2000. The petition was disposed of by consent of the parties by a workable order. The impugned order of the Asstt. Registrar dated June 24, 1998 and the order dated November 20, 1998 passed by the Industrial Court both were quashed and set aside and the Asstt. Registrar was, inter alia, directed as under:

"The Assistant Registrar is directed to hear and decide the application filed by the 3rd respondent union afresh and pass orders in accordance with law within 3 months from the date of this order."

The Division Bench had given other directions with which we are not presently and directly concerned. In effect, the matter was remanded back to the Asstt. Registrar for a fresh hearing and decision in accordance with law within the time schedule provided for by the Division Bench. Both the unions were directed to appear before the Asstt. Registrar who was directed to hear the parties and dispose of the application within the time bound programme.

2. Both the parties appeared before the Asstt. Registrar. It appears that the petitioner union filed an application before the Assistant Registrar for a direction to the respondent union to produce certain documents. By another application dated May 23, 2000, the petitioner union informed the Asstt. Registrar that it had received the documents as demanded by it by its application dated May 8, 2000 but it demanded some more documents and it insisted that the work under Rule 28-A should not be proceeded with unless the preliminary issues raised by it in respect of the eligibility of the application and other issues. A reply was filed by the respondent union on June 15, 2000 to the said applications. By an order dated June 14, 2000, the said application for documents was rejected by the Asstt. Registrar. From the said order it appears that the Asstt. Registrar had dealt with the objections raised by the petitioner union and he had also stated that after satisfying all the requirements only the work of verification of membership would be started under Rule 28-A. He further requested the petitioner union to cooperate with him to enable him to dispose of the matter within the time limit fixed by this Court and to produce its record which it did not do in the past though opportunity was given twice. Aggrieved by the said order, the petitioner filed an appeal on June 22, 2000 u/s 20 of the Act before the Industrial Court. The said appeal came to be dismissed by the Industrial Court by its order dated November 29, 2000. The petitioner is aggrieved by this order passed by the Industrial Court.

3. I have heard both the learned advocates at length. Shri Dharap the learned advocate for the petitioner union has taken me through the entire proceedings threadbare, as if I was hearing a first appeal against the order of the Industrial Court. Shri Dharap has made a serious grievance against the order of the

Assistant Registrar and also against the order of the Industrial Court that they have not decided preliminary issue raised by his clients that the application filed by the respondent union under Sections 16 and 23 of the Act was not maintainable at all. According to the learned advocate, unless this issue of maintainability of the application was decided by the Asstt. Registrar, who has been entrusted by the Act to hold an enquiry under the said provisions, he could not have proceeded further with the enquiry. According to Shri Dharap, it was the duty of the Asstt. Registrar to have decided the application filed by the petitioner union on May 23, 2000 requesting the said authority to decide the four issues raised therein as preliminary issues and to proceed with the enquiry only thereafter, as contemplated under Rule 28-A framed under the Act. It was insisted by the petitioner union that the aforesaid issues should be decided at the first instance and then only the enquiry should proceed. According to Shri Dharap, the preliminary issues raised by the petitioner union had gone to the root of the application and the application itself was not maintainable and that the petitioner union had not complied with the mandatory provisions prescribed under the law, seeking cancellation of the registration of the petitioner union and substitute it by the respondent union. Shri Dharap took pains to point out how the application filed by the respondent union suffered from several defects and basic irregularities such as the application was not accompanied by the requisite fee and that the said application was a composite application for eight local areas of Latur District and the constitution of the respondent union did not comply with the mandatory provisions of Section 23(i)(iv) of the Act, viz., it did not provide for an appointment of Government auditor. Shri Dharap has pointed out that the union had not paid fees on February 2, 1997 but had subsequently paid it on February 18, 1998. According to Shri Dharap, such composite applications were not maintainable and that eight separate individual applications ought to have been filed by the said union. Shri Dharap, further made a serious grievance that Section 16(4) provided for publication of such application. Shri Dharap has pointed out that what was really published in the Government Gazette was not a true copy of the application, but it was a modified, altered or amended copy of the application. Shri Dharap pointed out that the application which was actually filed did not contain membership of each local area while the application which was published had stated the actual membership of the respondent union in each of the local area. The learned Advocate seriously stressed that the application which was published was not the application which was actually filed and was not served on the petitioner union. On the basis of this material discrepancy, the learned Advocate doubts the motives of the authority and alleges male fides. Shri Dharap also pointed out that the Asstt. Registrar was taking keen interest in the matter and that he himself had filed reply to the petition filed before this Court and that he was actively participating in the proceedings. It was the contention of the learned Advocate that the aforesaid preliminary issues ought to have been decided by the Asstt. Registrar as the application itself could not be entertained and could not be proceeded further as it had suffered from basic and fundamental deficiencies as pointed out by the petitioner union before the Asstt.

Registrar and before the Industrial Court. Shri Dharap has submitted that even u/s 16 read with Rule 28-A the authority was required to first decide the maintainability of the application and then to proceed with further enquiry of verification of membership from the records produced by the parties. Shri Dharap has, therefore, strongly submitted that Asstt. Registrar should be directed to first decide the preliminary issues raised by his clients in the application dated May 23, 2000 and then only proceed further with the enquiry.

4. Ms. Buch, the learned counsel for the respondent union has also with equal vehemence at her command opposed each and every submission made by Shri Dharap. According to her, the scheme of Section 16 does not contemplate any stages of enquiry and that only one stage is contemplated u/s 16. The Registrar under the Act is empowered to hold such enquiry as deemed fit u/s 15 or Section 16 as the case may be. What is contemplated under the said provisions is only one enquiry at one stage. The law does not contemplate any decision to be given by the authority after the preliminary enquiry or preliminary issues before commencing the enquiry under Rule 28-A of the Act. The learned counsel has made a serious grievance against the petitioner union that though it had lost its registration as the representative and approved union for the local area of Latur District in the industry the petitioner union was trying to prolong the matter and final decision on one or the other ground to deprive the employees to be represented by the lawfully registered representative union i. e. the respondent union. She points out that the petitioner union had no membership at all even at present. She has further pointed out that the petitioner union was aggrieved by the order of the Asstt. Registrar and had, therefore, filed an appeal u/s 20 before the Industrial Court and had succeeded before the Industrial Court in getting the matter remanded back to the Asstt. Registrar for a fresh investigation. Ms. Buch pointed out that in fact the petitioner union had succeeded before the Industrial Court and still it has challenged that order before this Court under Articles 226 and 227 of the Constitution of India. The learned counsel submitted that all the points would be decided by the Asstt. Registrar simultaneously as contemplated by Section 16 of the Act as directed by the Industrial Court in the impugned order. The learned counsel has accused the petitioner union of dilatory tactics in which it has succeeded to drag on the matter for more than 4 years.

5. It is rather surprising that though the petitioner union was successful before the Industrial Court in getting the order of the Asstt. Registrar set aside and in getting an order from the Industrial Court to get a direction that the Asstt. Registrar should decide all the points including the preliminary points raised by the said union. The petitioner union has challenged that order which indeed is in its favour. The petition certainly reflects its dogged attitude that it would go on persisting its own points until it succeeds. Such attitude on the part of any party has to be deprecated as abuse of the process of law.

6. The grievance of the petitioner union is that the Industrial Court has not directed the Asstt. Registrar to decide the issues raised by it at the first instance

as preliminary issues and then proceed with further enquiry as required by it. The petitioner union is dissatisfied with the impugned order of the Industrial Court only to this extent that the Asstt. Registrar was not directed to decide the issues raised by it in its application dated May 23, 2000 as preliminary issues which go to the root of the application. I do not find any illegality or infirmity in the order of the Industrial Court when it had quashed and set aside the order of the Registrar which was challenged before the Industrial Court by the petitioner union. I am not making any observations in respect of the order passed by the Asstt. Registrar on the application of the petitioner union, as the same has been quashed and set aside by the Industrial Court. The Asstt. Registrar is once again directed to decide that application but simultaneously with all other points in respect of verification of membership as contemplated under Rule 28-A of the Act. I do not agree with the submissions made on behalf of the petitioner union by Shri Dharap that Section 16 contemplates two stages of the enquiry i. e. (i) in respect of maintainability of the application and (ii) in respect of verification of the membership. The Supreme Court has time and again observed and in fact deprecated the practice of splitting up the labour matters into various stages. In fact it is observed by the Supreme Court in one of the judgments that the employers were raising such preliminary issues in order to break the resistance of the labour. The Supreme Court has always insisted that the labour matters should be decided as expeditiously as possible and all the points including the preliminary issues should be decided once and for all. In the present case, the petitioner union has been vehemently insisting that it raised preliminary points which go to the root of the matter and according to the petitioner, the application was not at all tenable and that it suffered from fundamental defects and lacunae including the compliance of Section 23(i)(iv) of the Act in respect of the provisions in the constitution of the union. Shri Dharap has no doubt tried to raise several factually alleged irregularities committed by the respondent union while making the application u/s 16 of the Act. The Industrial Court has rightly held and directed that the Registrar should decide all the points raised by the respondent union simultaneously. It is not at all contemplated u/s 16 that enquiries should be divided or split up at different stages. It will not be in the interest of industry that such matters get prolonged at the instance of one or the other interested parties. The Act certainly envisages that the character or status of a representative of employees should get determined at the earliest as the employer-employee relationship cannot be kept in an animated suspension. Under the law the employees are made to depend on the representative union and therefore they cannot be left without their representative union to create chaos and unrest in the industry. The registration and/or cancellation of registration of a representative union must be decided as expeditiously as possible in the interest of the employees and the industry which is wholly made dependent on the cooperation of the representative union for smooth and peaceful running of the industry. Though the B.I.R. Act has prescribed certain manner in every respect and the authorities are bound to function in accordance with the prescribed manner while deciding these applications, finally they have to

decide the question of registration/cancellation of the registration of a union on the basis of the verification of the membership records of the contesting union and those records alone reflect the real will of the employees. The law has given greater emphasis and according to me rightly so, on the membership records for determination of the representative character of a union. A representative union is given the highest status in the industry and such status cannot be secured unless the union satisfies all the mandatory requirements including the minimum membership. Similarly such status cannot be cancelled lightly and on technical grounds or defects which can be cured even subsequently, regardless of the verification of membership. The whole enquiry under Chapter III of the Act therefore, is to be undertaken and completed at a stretch and never piecemeal or in parts. The authority, however, is duty bound to decide all the points raised during the course of the proceedings. We cannot permit the parties in such proceedings to prolong such enquiries as the Court litigation allowing all kinds of technical and frivolous points thrown to create hurdles in the process of the enquiry by the authorities. We cannot even for a moment forget that the proceedings under this chapter is contemplated as an "enquiry", and not a Court proceeding. It is wholly for the authority to decide the manner of the enquiry and not for the parties to dictate that the enquiry should be divided into stages. I must humbly mention that in such matters even at interlocutory stages writ jurisdiction should be sparingly exercised only in an extraordinary and exceptional situation of grave injustice and unless the whole enquiry is completed and the wishes and the mandate of employees is decided.

7. I have not made any observations on the merits of the objections raised by Shri Dharap. It would be for the Asstt. Registrar to deal with each and every point and pass a speaking order in respect of the points which were raised by the union in its application dated May 23, 2000. At one stage it appears that the Asstt. Registrar did deal with the said points but as the said order was quashed and set aside the Asstt. Registrar would pass a fresh order on the said points while deciding the application finally. The Asstt. Registrar shall scrutinise and verify the membership and would finally decide the application filed by the respondent union as expeditiously as possible. The Asstt. Registrar shall also give his finding in respect of serious allegations made on behalf of the petitioner that what was published was not the, actual application filed by the respondent-union. He will also call for certified copy of the constitution of the respondent union and examine whether the mandatory provisions required u/s 23(i)(iv) of the Act was complied with by the said union. He shall do all that is required under the law but at one stage, simultaneously. The Asstt. Registrar shall decide the application in accordance with law as expeditiously as possible within six months from receipt of writ of this Court. Office is directed to send the writ forthwith.

8. The Asstt. Registrar shall decide the application filed by the respondent No. 2 under Sections 16 and 23 of the Act. It is clarified that the Asstt. Registrar shall hear and decide the preliminary objections raised by the petitioner union with

further decision. It is further clarified that the order passed by this Court on April 25, 2000 in Writ Petition No. 724 of 1999 shall continue till final decision of the Asstt. Registrar and one month after the receipt of the order by the parties.

9. With these directions, the petition is dismissed. Rule is discharged, I have no doubt in my mind that the petitioner union has abused the process of law by filing this petition against the order which was wholly before the Industrial Court. I was inclined to impose exemplary cost on the petitioner union but in view of the sober approach of Shri Dharap, the learned advocate for the petitioner union, I am sparing it from cost and therefore, no orders as to costs. In view of dismissal of the petition, the C.A. is disposed of accordingly.

10. All concerned to act on a copy of this order duly authenticated by the Sheristedar.