
(1976) 09 BOM CK 0030

In the Bombay High Court

Case No : Special Civil Application No's. 1927 and 3459 of 1976

Forbes Forbes Campbell and Co. Ltd.

APPELLANT

Vs

M.G. Chitale

RESPONDENT

Date of Decision : 20-09-1976

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 11, 12, 13, 19, 26

Citation : (1979) 81 BOMLR 1 : (1977) MhLj 869

Hon'ble Judges : Tulzapurkar, J;Gadgil, J

Bench : Division Bench

Judgement

Tulzapurkar, J.—By these two writ petitions filed under Articles 226 and 227 of the Constitution of India, the petitioner-company is seeking to raise two important questions for our determination viz:

(1) Whether the requirements of Section 19(ii), (iii) and (iv) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (hereinafter called "the Act"), are conditions precedent to the filing of an application for recognition by a trade union u/s 11 of the Act or the said requirements could be complied with even during the pendency of such application upto the date, of granting of recognition?

(2) Whether while considering the question of granting such recognition u/s 12 of the Act, the Industrial Court should inquire into any unfair labour practice allegedly committed by the union after the filing of the application, but during its pendency and if proved should in view thereof refuse recognition?

2. The two questions arise in these circumstances: The petitioner-company (Forbes Forbes Campbell & Co. Ltd.) has its head office at Forbes Building, Charanjit Rai Marg, Bombay, and three factories at its Chandivali estate at Saki Powai Road, namely, (a) Warriar Division Factory manufacturing thread cutting tools, (b) Engineering Division Factory manufacturing spring lock washers and

Rotary Cutters, and (c) Communication Division Factory manufacturing rectified power plants and other electrical items. On December 15, 1975, respondent No. 2 (Engineering Mazdoor Sabha, a trade union registered under the Trade Unions Act, 1926, representing workers in Engineering Industry/Trade in Greater Bombay) filed an application in the prescribed form (being MRTU No. 39 of 1975) for registration as a recognised Union for the petitioner-company in respect of the latter's employees in the head office and workers in the said three factories u/s 11 of the Act. In the application, it was inter alia claimed that respondent No. 2 (applicant-union) was having 100 per cent, membership of the employees and workers in the Undertaking of the petitioner-company for the whole of the period of six calendar months immediately preceding the month in which the application was made and that the Undertaking for which it was seeking recognition was engaged in Engineering Industry/Trade. It appears that subsequent to the filing of this application, respondent No. 2 (applicant-union) received a letter from the employees working in the head office of the petitioner-company, stating that they had ceased to be members of respondent No. 2 union and were resigning from its membership and, therefore, on January 19, 1976, respondent No. 2 made an application to the Industrial Court stating that it no longer sought recognition for the head office staff. On that very day, two other unions applied to the Industrial Court for being joined as parties to the application (MRTU No. 39 of 1975) as they desired to oppose respondent No. 2's application for recognition and accordingly these two other unions were impleaded as parties to the said application. By its written-statement dated January 27, 1976 and supplementary pleading dated February 26, 1976, the petitioner-company resisted the grant of recognition to respondent No. 2 on several grounds; principally the petitioner-company contended that the requirements of Section 19(ii) and (iv) had not been complied with by respondent No. 2, inasmuch as there was, contrary to Section 19(ii), failure to observe the conditions of holding the Executive Committee's meetings every three months as had been provided for in its constitution and that the constitution of respondent No. 2 did not even provide for an auditor appointed by the State Government auditing its accounts at least once in each financial year as required by Section 19(iv) and that since these requirements were not complied with by respondent No. 2 on the date of the application, the application for recognition was, not maintainable. In between on February 3, 1976, the petitioner-company filed a complaint (being ULP No. 35 of 1975) u/s 28 of the Act complaining of unfair labour practices on the part of respondent No. 2; in particular it was alleged that the applicant-union had, subsequent to the filing of its application for recognition indulged in unfair labour practices listed at Item Nos. 1, 2(b) and 5 of Schedule III to the Act and obtained an ad interim injunction restraining the applicant-union, its office bearers, servants or agents from instigating the petitioner-company's workers to indulge in acts of violence and from threatening or assaulting its managerial and supervisory staff. On February 20, 1976, the Industrial Court directed that the application MRTU No. 39 of 1975 be referred to the investigation officer for checking the membership of respondent No. 2 and that the investigation officer

should submit his report by March 8, 1976. On February 26, 1976, respondent No. 2 filed its reply to ULP No. 35 of 1975 denying all the allegations about having engaged in any of the alleged unfair labour practices and contending that a complaint had been filed with a view to delay the granting of recognition to it and that the same be dismissed.

3. On February 26, 1976, the petitioner-company requested the Industrial Court to hear and decide the question of non-maintainability of the application for recognition on several grounds urged by it as a preliminary issue. It was contended on behalf of the petitioner-company that since the requirements of Section 19(7) and (iv) had not been complied with by the applicant-union on or before the date of the application, the application for recognition was not maintainable. It was pointed out that u/s 19(7), it was obligatory on the part of the applicant union to have held its Executive Committee's meetings at intervals of not more than three months and that from what had been stated by the applicant-union in paragraph 11 (ii) of its application in the prescribed form, it was clear that during the twelve months preceding the date of the application, no Executive Committee meetings of the applicant-union was held between December 15, 1974 and May 21, 1975, and as such the applicant-union had on its own admission failed to observe the condition mentioned in Section 19(ii) of the Act. It was further pointed out that even the constitution of the applicant-union (Rules of the union) did not contain a provision for the matter specified in Section 19(iv). For these reasons it was contended that the application was not maintainable. It was further contended that the petitioner-company's allegations that respondent No. 2 committed unfair labour practices should be inquired into first before granting recognition because in case the allegations were proved and a finding in that behalf was recorded against respondent No. 2, that would disentitle it to recognition. On the other hand, it was urged on behalf of respondent No. 2 that satisfaction of the conditions mentioned in Section 11(1) of the Act was a condition precedent to the making of the application for recognition, but the conditions mentioned in Section 19(ii), (iii) and (iv) could not be regarded as conditions precedent to the making of the application, though compliance with those conditions would be necessary before the grant of the recognition; in other words, it was contended that conditions mentioned in Section 19(ii), (iii) and (iv) could be complied with even during the pendency of the application before the actual grant of recognition was made. As regards non-observance of the condition contained in Section 19(ii), it was pointed out that such non-observance related to a period prior to the coming into force of the Act itself, as also prior to the making of the application for recognition and as such, such non-observance would not be a ground for disallowing the recognition, especially when Section 19 used the phrase "the provisions thereof (Rules) shall be duly observed by the Union" and it was further pointed out that there was no breach of the condition after the Act had come into force right upto the month in which the application was made. As regards Section 19(iv), it was pointed out that the constitution of respondent No. 2 had since the making of the application

been amended so as to satisfy the requirements of the said provision. On the question of inquiry into the petitioner-company's allegations about applicant-union having committed unfair labour practices, it was contended that the only grounds on which recognition could be refused even though the applicant-union was otherwise eligible for recognition were those set out in Section 12(5) and (6) of the Act and no inquiry into the unfair labour practices allegedly committed by the applicant-union could be and/ or should be undertaken by the Court while considering the question of according the recognition sought. It was urged that such unfair labour practices allegedly committed by the applicant-union subsequent to the application for recognition would form the subject-matter of an inquiry u/s 13 of the Act, whereunder the question of cancelling the recognition already granted could be considered.

4. It appears that the several grounds mentioned above on the basis of which the petitioner-company canvassed its contention about the non-maintainability of respondent No. 2's application for recognition were heard piecemeal by the Industrial Court and some of them were negatived by that Court by its order dated March 8, 1976, while others were negatived by its order dated March 31, 1976. On the principal question, the Industrial Court took the view that the cumulative effect of Sections 11, 12 and 19 of the Act considered together was that only the conditions prescribed by Section 11(1) were required to be satisfied before a trade union, could apply for recognition and the Court was required to be satisfied that: the conditions of Section 19(ii) and (zv) were complied with before recognition was granted. Secondly as regards non-observance of the conditions specified in Section 19(ii) on the part of respondent No. 2, the Industrial Court held that since such non-observance related to a past period, that is to say had occurred during a period prior to the coming into force of the Act as also prior to the making of the application, that would not be a ground for disallowing the recognition that was sought by respondent No. 2. As regards non-compliance of the requirement of Section 19(iv), the Industrial Court took the view that it was permissible for respondent No. 2 to have its constitution amended so as to include the relevant provision therein even during the pendency of the application and that since the constitution had been subsequently amended so as to satisfy the requirement of that clause, there was no question of the application being regarded as untenable on that ground, On the question whether while considering the question of granting recognition u/s 12 of the Act, the Industrial Court should inquire into unfair labour practices allegedly committed by the applicant-union during the pendency of the application and if proved should refuse recognition, the Industrial Court took the view that since one of the objects of the Act was speedy disposal of the application for recognition, an inquiry into the complaint of unfair labour practices allegedly committed by the applicant-union subsequent to the making of the application would inordinately delay the granting of the recognition and such delay would defeat the aforesaid objective of the Act and, therefore, such inquiry should not be undertaken by the Court while considering the question of

granting of recognition u/s 12 of the Act and that such inquiry could properly become the subject-matter of an application for derecognition u/s 13 of the Act. It was also held by the Industrial Court that the only grounds on which recognition could be refused even though the applicant-union was otherwise eligible for recognition, were those that had been set out in Sub-sections (5) and (6) of Section 12 of the Act and that any unfair labour practice by way of illegal strike beyond the period mentioned in Sub-section (6) of Section 12 could not be taken into account. It was further held that Section 13 of the Act sets out the grounds on which recognition already granted could be cancelled, that some of the grounds for cancelling recognition dealt with eligibility conditions, while others dealt with commission of unfair labour practices leading to derecognition and that recognition could be refused only if lack of eligibility conditions arose during the pendency of the application, but not on the other grounds pertaining to the commission of unfair labour practices mentioned in Section 13 of the Act. The Industrial Court's view on both these important aspects of the matter is being challenged by the petitioner-company in these two writ petitions, Special Civil Application No. 1927 of 1976 being directed against the impugned order dated March 8, 1976, while Special Civil Application No. 3459 of 1976 being directed against the impugned order dated March 31, 1976. Incidentally it may be stated that the Industrial Court did not permit the petitioner-company to raise a plea that respondent No. 2 could not seek recognition in respect of its workers working in the communications division factory on the ground that the said factory was and is an electronic industry and not an engineering industry and that was on the ground that no such specific plea had been raised by the petitioner-company in any of its written pleadings. The order of the Industrial Court in this behalf viz., in refusing permission to the petitioner-company to raise such a plea is also being challenged before us.

5. It cannot be disputed that the answer to the first of the two important questions which arise for our determination in this case depends upon the proper construction of Sections 11, 12 and 19 of the Act read together. Before turning to these sections however, it would be useful to refer to the preamble of the Act, definitions of certain relevant expression is given in Section 3 and certain other sections of the enactment. The preamble clearly shows that the Act was put on the statute book with the object of providing for the recognition of trade unions for facilitating collective bargaining for certain undertakings, to state their rights and obligations, to confer certain powers on unrecognised unions, to provide for declaring certain strikes and lock-outs as illegal strikes and lock-outs, to define and provide for the prevention of certain unfair labour practices, to constitute Courts (as independent machinery) for carrying out the purposes of according recognition to trade unions and for enforcing the provisions relating to unfair practices and to provide for matters connected with the purposes aforesaid. The enactment as well as the Rules framed by the State Government u/s 61 of the Act have come into force on September 8, 1975 under a Notification issued by the State Government in, that behalf. Section. 3(11) defines the expression

"union" as meaning a trade union of employees, which is registered under the Trade Unions Act, 1926. Section 3(11) defines the expression "member" thus:

"member" means 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:

Provided that, no person shall at any time be deemed to be a member, if his subscription is in arrears for a period of more than three calendar months during the period of six months immediately preceding such time, and the expression "membership" shall be construed, accordingly.

Explanation.-A subscription for a particular calendar month shall, for the purpose of this clause, be deemed to be in arrears, if such subscription is not paid within three months after the end of the calendar month in respect of which it is due;

Section 3(13) defines the expression "recognised union" as meaning a union which has been issued a certificate of recognition under chap. III. The expression "undertaking" has been defined in Section 3(15) thus:

"Undertaking" for the purposes of Chapter III, means any concern in industry to be one undertaking for the purpose of that Chapter;

The expression "'unfair labour practices" is defined by Section 3(16) as meaning unfair labour practices as defined in Section 26, and u/s 26 "unfair labour practices" mean any of the practices listed in sens. II, III and IV.

6. Section 5 sets out the duties of the Industrial Court constituted u/s 4 and two of the duties relevant for our purpose as enumerated in Section 5 are: (a) to decide an application by a union for grant of recognition to it and (b) to decide complaints relating to unfair labour practices except unfair labour practices falling in item 1 of sen. IV which are to be decided by Labour Court. Then come Sections 11, 12 and 19 with which we are principally concerned on the first question that arises for our determination. It will be necessary to set out the relevant provisions of these sections.

7. Section 11 runs thus:

11. (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. Section 12 runs thus:

"12. (1) On. receipt of an application from a union for recognition u/s 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, if any, 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.

Section 19 runs thus:

19. The rules of a union seeking recognition under this Act shall provide for the following" matters, and the provisions thereof shall be duly observed by the union, namely:-

- (i) the membership subscription shall be not less than fifty paise per month;
- (ii) the Executive Committee shall meet at intervals of not more than three months;
- (iii) all resolutions passed, whether by the Executive Committee or the general body of the union, shall be recorded in a minute book kept for the purpose;
- (iv) an auditor appointed by the State Government may audit its account at least once in each financial year.

8. At the outset it may be stated that Section 11 confers a right upon the trade union to make an application for recognition in the prescribed form, to the Industrial Court, while Section 12 deals with the procedure which the Industrial Court has to follow while considering the question of granting recognition to the applicant-union. Both the sections occur in chap. III which deals with the topic of "Recognition of Unions". Section 19 sets out obligations of a recognised union and occurs in chap. IV which deals with the topic of obligations and rights of recognised unions, other unions and certain employees. There can be no doubt that both Sections 11(1) and 19 prescribe or specify the conditions of eligibility for obtaining recognition under the Act, but the question is whether all of them are conditions precedent to the making of application by trade union, that is to say, whether all must be possessed by the applicant-union on or before the date of making such application or some of them could be acquired during the pendency of the application before the actual grant of recognition is made? It is common ground that Section 11(1) specifies certain conditions or requirements which are condition precedent to the making of application for recognition. The language of Section 11(1) is explicit in that behalf, for on a plain reading of that provision it becomes clear that before any union can apply for being registered as a recognised union for any given undertaking, such union must have, for the whole of the period of six calendar months immediately preceding the calendar month in which it so applies, a membership of not less than 30 per cent, of the

total number of employees employed in the undertaking. Further the expression "union" occurring in that section must be a union as defined in Section 3(17), that is to say, must be a trade union registered under the Trade Unions Act, 1926 and secondly the minimum 30 per cent, membership spoken of by that section must be of members falling within the definition of that expression given in Section 3(11), that is to say, comprising of members who have paid subscription to the union of not less than fifty paise per calendar month and who are not in arrears of their subscription as mentioned in the proviso to Section 3(11); in other words, all these conditions specified in Section 11(1) read with Section 3(17) and Section 3(11) must exist on or before the date of the application for recognition that may be made by the applicant-union. The question is whether the conditions or requirements of Section 19 which also deal with the eligibility for recognition must be possessed or satisfied by the applicant-union on or before the date of making the application for recognition? Turning to Section 19 a plain reading thereof will show that it is, in two parts; the first part deals with what the constitution of the union (referred to as "Rules of a union" should contain or provide for and under this part it is provided that the constitution of a union should contain or provide for matters specified in Clauses (i) to (iv) thereof, while the second part deals with the observance by the union of those matters which have been specified in Clauses (i) to (iv); in other words, what Section 19 lays down is that the constitution of a union seeking recognition under the Act should not merely provide for matters specified in Clauses (i) to (iv) but the union seeking recognition should also observe the provisions of Clauses (i) to (iv)- Out of the four matters specified in Section 19 the first matter relates to, the membership subscription which, it is stated, shall not be less than fifty paise per month, and since this also happens to be the requirement u/s 11(1), read with Section 3(11), it cannot be disputed that the said requirement must exist and must be possessed by the applicant-union before making an application for recognition u/s 11(1) of the Act, In other words, this item contained in Section 19(i) becomes condition precedent to the making of application for recognition not by reason of Section 19 but by reason of Section 11(1), read with Section 3(11), of the Act. The question, therefore, which really arise for our consideration is whether the- conditions or requirements of Clauses (ii), (Hi) and (iv) of Section 19 should also be regarded as conditions precedent to the making of application for recognition or not? According to Mr. Singhvi, even these conditions or requirements of Section 19(ii), (iii) and (zv) must be regarded as conditions precedent to the making of application, that is to say, even these requirements must be complied with or fulfilled by a union seeking recognition before filing the application for recognition. In support of this contention three or four aspects were relied upon by him. In the first place, reliance was placed upon the expression "seeking recognition" occurring in Section 19 and it was urged that that expression clearly shows that the conditions or requirements of Clauses (ii), (Hi) and (iv) of Section 19 should be possessed by the applicant-union before it files its application for recognition; secondly, he principally relied upon Section 12(2) of the Act, which provides that before granting recognition to the

applicant-union the Industrial Court must come to two conclusions, namely (a) that the conditions requisite for registration specified in Section 11 are satisfied and (b) that the applicant-union also complies with the conditions specified in Section 19 of the Act; thirdly, he contended that the conditions of eligibility for recognition u/s 19 were not a matter of formality or technicality but were a matter of substance and these conditions must be regarded as conditions precedent to the maintainability of the application for recognition, otherwise the period of six months immediately preceding the date of the application for recognition which has been provided for u/s 12(6) will get shifted to the day when the compliance of Clauses (ii), (iii) and (iv) of Section 19 is effected during the pendency of the application. He further pointed out that similarly for the opposing union desiring recognition under the Explanation to Section 12(5) the period of six months will get shifted; fourthly, it was pointed out by him that Section 11(1) requires that the application for re-cognition should be made in the prescribed form and Form "A" which has been prescribed under Rule 4 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Rules, 1975 (framed u/s 61 of the Act) contains Clauses 7 and 11 and these clauses clearly suggest that the requirements of Section 19(ii), (iii) and (iv) must be fulfilled or complied with at the date of the application; and lastly it was contended that if the Legislature had intended that the requirements of Section 19(ii), (iii) and (iv) should be complied with even after the making of application, some period would have been provided for either in the Act or the Rules within which such compliance is to be made or effected and the absence of any provision indicating such period clearly shows that these requirements must be complied with by the applicant-union on or before the date of filing of the application for recognition. Relying on these aspects it was contended by Mr. Singhvi appearing for the petitioner-company and by counsel appearing for the interveners that the conditions of eligibility specified in Section 19 of the Act must be regarded as conditions precedent to the making of application for recognition, that is to say, it was not open to the applicant-union to acquire them during the pendency of the application. It is not possible to accept the aforesaid contention of Mr. Singhvi and counsel appearing for the interveners for the reasons which we shall presently indicate and we shall point out as to why none of the aspects on which reliance has been placed really lends support to their contention.

9. The question raised will have to be approached first and foremost from the angle of proper construction of three relevant sections which will have to be read together viz. Sections 11, 12 and 19 of the Act. As a matter of construction it will have to be observed first that it is only Section 11(1), which deals with the applicant-union's right to make an application for recognition in the prescribed manner to the Industrial Court and sets out the conditions which the applicant-union must fulfil before making the application, while Section 19, though it specifies the conditions of eligibility which the union seeking recognition must possess, does not deal with the right to apply for recognition and since the said

section does not deal with the right to apply for recognition, it is difficult to accept that the said section by itself suggests that the conditions of eligibility specified in Clauses (ii), (iii) and (iv) must be possessed by the union seeking recognition on or before the date of application. It is true that the expression "seeking recognition" has been used in the opening para, of Section 19, but considering the opening para, of that section it seems to us very clear that the said expression used therein merely shows what the constitution of union, if it wants recognition, should provide and further that the union, if it wants recognition, must observe the conditions or obligations specified in, Clauses (ii), (iii) and (iv). Moreover, a union, which has applied for recognition, continues to remain "a union seeking recognition" right upto the time the actual grant of recognition is made or refused by the Court. It is true that the union on the date when it applies for recognition is also "a union seeking recognition" but this aspect will be inconsequential in the context of the question which is being considered by us as to whether the requirements of Clauses (ii), (iii) and (iv) of Section 19 are conditions precedent to the maintainability of the application or not. All that we are trying to point out is that mere user of the expression "seeking recognition" in the first para, of Section 19 will have no bearing on the question of proper construction for the purpose of determining the question as to whether the requirements of Clauses (ii), (iii) and (iv) of Section 19 should be regarded as conditions precedent to the maintainability of the application or not. In our view, therefore, the contention urged by Mr. Singhvi and other supporting counsel appearing for the interveners that the fulfilment of requirements of Clauses (ii), (iii) and (iv) of Section 19 should be regarded as condition precedent to the making of application on the ground that the opening para, of Section 19 uses the expression "seeking recognition" cannot avail the petitioner-company on the matter of construction. As stated above, it is clear that since Section 19 does not deal with the right to apply for recognition, it will be difficult to accept that the section by itself suggests that those conditions of eligibility specified in Clauses (ii), (iii) and (iv) must be possessed by the union seeking recognition on or before the date of application. In fact, it is Section 12(2) of the Act which by incorporation, of Section 19 makes the compliance of the conditions of eligibility specified in Section 19 a condition precedent to the grant of recognition. Section 12(2), which is a procedural section, provides what the Industrial Court should do while considering the question of grant of recognition to the applicant-union and it says that after considering the objections, if any, received under Sub-section (1) and after holding such enquiry in the matter as it deems fit the Industrial Court shall grant recognition to the applicant-union after it comes to the two conclusions: (a) that the conditions requisite for registration specified in Section 11 are satisfied and (b) that the applicant-union also complies with the conditions specified in Section 19 of the Act; in other words, Section 12(2) clearly directs the Industrial Court to grant recognition only after it is satisfied that the conditions of Section 11 as well as the conditions of Section 19 are complied with, which clearly suggests that the conditions are to be complied with before granting recognition. The language of Section 12(2) clearly

suggests that it is during the pendency of the application for recognition and during the course of its hearing that the Industrial Court is required to be satisfied that the conditions of eligibility both under Sections 11(1) and 19 are fulfilled or satisfied by the applicant-union before the recognition is actually granted. It seems to us clear that even Section 12(2) by itself does not suggest that the conditions of eligibility prescribed by Section 11(1) are the conditions precedent to the making of application for recognition but the Industrial Court should be satisfied about the fulfilment of these conditions before recognition is actually granted and it is only by reason of Section 11(1) of the Act that the conditions of eligibility prescribed therein are made conditions precedent to the making of application. In other words, on a proper construction neither Section 19 nor Section 12(2) read with Section 19, makes the conditions of eligibility prescribed by Clauses (ii), (Hi) and (iv) of Section 19 conditions precedent to the making of application, but in fact the procedural Section 12(2) clearly suggests that the Industrial Court must come to the conclusion, that the conditions of eligibility specified in Section 19 are complied with by the applicant-union before the grant of recognition is made to it. Unlike the provisions of Section 11(1) there is nothing in Section 19 nor in Section 12(2) read with Section 19 to suggest that the compliance of conditions specified in Section 19(ii), (Hi) and (iv) is a condition precedent to the making of application. In fact, on reading Sections 11(1), 12 and 19 together a fair construction thereof clearly shows that unlike the provisions of Section 11(1) which make the conditions of eligibility specified therein a condition precedent to the maintainability of application for recognition!, the language of Section 12(2), read with Section 19, shows that the conditions of eligibility prescribed in Section 19 (ii), (Hi) and (iv) are conditions which should be fulfilled by the applicant-union even during the pendency of application but before the actual grant of recognition is made. As a matter of pure construction we are clearly of the opinion that by using the language, which it has used, in Section 12(2) in contra-distinction with the language used in 11(1) the Legislature by necessary implication clearly intended that the conditions of eligibility prescribed by Section 19(ii), (Hi) and (iv) could be acquired by the applicant-union even during the pendency of the application for recognition but must be acquired before the actual grant of recognition was made. In our view, if the intention were otherwise, the Legislature while enacting Section 12(2) would have used appropriate language. On a true construction of the aforesaid three relevant sections together, therefore, we are unable to accept the contention of Mr. Singhvi and other counsel appearing for the interveners that the requirements of Clauses (ii), (iii) and (iv) of Section 19 must be regarded as conditions precedent to the maintainability of the application for recognition.

10. Turning to a priori arguments of Mr. Singhvi it must be observed that if on a proper construction of the relevant sections of a conclusion is reached that the compliance with the requirements of Section 19 (ii), (Hi) and (iv) cannot be regarded as conditions precedent to the maintainability of the application, a

priori arguments cannot avail the petitioner-company. However, we deal with these arguments and show how these cannot lend support to the main contention urged on behalf of the petitioner-company. It was urged by Mr. Singhvi that the conditions of eligibility for recognition u/s 19(ii), (Hi) and (iv) were not a matter of formality or technicality but were a matter of substance and these conditions "must be regarded as conditions precedent to the maintainability of the application for recognition, for, otherwise the period of six months immediately preceding the date of application for recognition which has been provided for u/s 12(6) shall get shifted to the day when the compliance of Clauses (ii), (iii) and (iv) of Section 19 is effected during the pendency of the application. In the first place, the aspect whether the conditions of eligibility for recognition u/s 19(ii)", (Hi) and (iv) are a matter of substance and not of any formality or technicality is really beside the point, for, irrespective of the question as to whether these conditions are a matter of substance or formality and even if these conditions are regarded as a matter of substance and not of formality, it will have no bearing on the question as to whether the compliance with those conditions should be regarded as conditions precedent to the maintainability of the application for recognition or not. It is open to the Legislature to provide either expressly or by implication that even the conditions of eligibility which are of substance could be satisfied by the applicant-union before the actual grant of recognition is made to it and as we have stated above, the Legislature in the instant case has by clear implication provided that the conditions specified in Section 19(ii), (Hi) and (iv) could be satisfied by the applicant-union even during the pendency of the application but before the actual grant is made. Secondly the inference sought to be drawn that the conditions of eligibility specified in Clauses (ii), (Hi) and (iv) of Section 19 are a matter of substance in view of the provisions of Section 12(6) would not necessarily be correct. All that Sub-section (6) of Section 12 provides is that the Industrial Court shall not recognise any union if at any time within six months immediately preceding the date of application for recognition the union has indulged in specified unfair labour practice viz, has, instigated, aided or assisted the commencement or continuance of a strike which is deemed to be illegal under the Act. The argument that the period of six months spoken of by Sub-section (6) of Section 12 will get shifted to the day when the compliance with Clauses (II), (iii) and (iv) of Section 19 is effected is based on the assumption that the conditions specified in Section 19(?), (Hi) and (iv) are conditions precedent to the maintainability of the application and as we have indicated above, there is no warrant for making this assumption, with the result that there will be no question of shifting the six months" period to the day on which the compliance with Section 19(ii), (Hi) and (iv) is made or effected. If on a proper construction the conditions of eligibility specified in Section 19(ii), (Hi) and (iv) could be acquired by the applicant-union at any time up to the date of the actual grant of recognition to it, there will be no question of shifting the period spoken of by Section 12(6), but for invoking the period of six months spoken of by that provision, reference will still have to be made to the date when the application for recognition has been made and the

question whether recognition should be refused by the Industrial Court or not will depend whether the specified unfair labour practice is proved to have been committed by the applicant-union at any time during the six months immediately preceding the date of the application for recognition; similar would be the position with regard to the six months period provided for under the Explanation to Section 12(3) in respect of the opposing union desiring recognition. As regards the contention that no specific period within which compliance of the requirements of Section 19(ii), (iii) and (iv) should be made by the applicant-union we find no substance in that contention, for, u/s 12(2) the period within which the compliance with the conditions specified in Section 19 should be made by the applicant-union has been clearly specified and that is, those conditions should be complied with before the actual grant of recognition is made to it.

11. On behalf of the applicant-union Mr. Damania contended before us that having regard to the object of the enactment, the language of Section 19 and the drastic consequences that follow upon failure to acquire the conditions of eligibility specified in Section 19, the provisions of Section 19 will have to be regarded as directory and not mandatory and in that behalf reliance was placed by him upon the Supreme Court decision in the case of *The Remington Rand of India Ltd. Vs. The Workmen*, , where the Court quoted with approval the observation of Subbarao J. in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, , to the following effect (p. 226):

For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.

He went on to contend that if the requirement of Section 19(ii), (iii) and (iv) are regarded as directory and not mandatory, then substantial compliance thereof would be enough, in which event, it could be held that the compliance with the requirements of Section 19(ii), (iii) and (iv) could be had by the applicant-union even during the pendency of application for recognition but before the actual grant is made. He, therefore, took us through the material provisions of the enactment and urged that having regard to the object of enactment, the language of Section 19 and the drastic consequences that flow from non-compliance with the said requirements, the provisions of Section 19 should be held to be directory and not mandatory. In our view, the question whether the provisions of Section 19 are directory or mandatory will not be decisive of the question whether the compliance with the requirements of Section 19(ii), (iii) and (iv) should be regarded as condition precedent to the making of the

application or not, for, even if the provisions of Section 19 are regarded as directory and not mandatory, all that it will mean is that substantial compliance thereof would be sufficient, but the question would still remain as to whether such "substantial compliance should be before the filing of application for recognition or could be had even during the pendency of the application up to the time of the actual grant of recognition and in our view, this question must of necessity depend upon the proper construction of the relevant sections read together viz. Sections 11, 12 and 19 of the Act. The contention of Mr. Damania, therefore, does not avail him.

12. Having disposed of a priori arguments on either side, we shall now deal with the contention that was based upon the contents of Form "A" which has been prescribed by Rule 4 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Rules, 1975, as per which a union seeking re-cognition is required to make the application u/s 11(1) of the Act. It was pointed out that the MRTU & PULP Rules have been framed u/s 61 of the Act which empowers the State Government to frame Rules for carrying out the purposes of the Act. It was further pointed out that as required by Sub-section (2) of Section 61 these Rules were laid before each House of the State Legislature and were approved and passed by the State Legislature; in other words, it was pointed out that these Rules must be regarded as statutory rules having the force of law and Rule 4 requires that the application by any "union for registration as a recognised union u/s 11 must be in Form A. The prescribed Form A contains two material clauses viz. Clauses 7 and 11. Clause 7 runs thus:

7. The Constitution of the applicant union provides for the matters mentioned in section 19 of the Act. A copy of the Constitution is attached.

The material portion of Clause 11 runs thus:

11.(i) (ii) The Executive Committee of the applicant union met on the following dates "during the twelve months" preceding the date of the application.. . .

Having regard to Clauses 7 and 11, which appear in the prescribed Form A, it was urged that) these clauses clearly suggest that the requirements of Section 19(ii), (Hi) and (iv) must be fulfilled by the applicant-union on or before the date of the filing of the application for recognition of the union, for, under Clause 7 the applicant-union, is required to make a statement in the application for recognition that its constitution provides for the matters mentioned in Section 19 of the Act and a copy of the constitution is attached; similarly the applicant-union is required to give particulars of various dates during twelve months preceding the date of the application on which the meetings of the Executive Committee have been held; in other words, it was contended that the statements of the nature indicated in Clauses 7 and 11 of the prescribed Form A obviously suggest that the requirements of Section 1907), (iii) and (iv) must have been complied with by the applicant-union on or before the date of the application for recognition and since the form "A" has been prescribed under the statutory Rules

having the force of law, the provisions of Section (ii), (Hi) and (iv) must be regarded as containing the conditions of eligibility the compliance whereof would be a condition precedent to the making of the application for recognition.

13. In support of this aforesaid contention reliance was placed by Mr. Singhvi upon a passage occurring in Maxwell on the Interpretation of Statutes, twelfth edn., at p. 74, which runs thus:

In Ex parte Wier. In re Wier (1871) L.R. 6 Ch. App. 875, James and Mellish L JJ said (at p. 879) "that, where the construction of the Act is ambiguous and, doubtful on any point, recourse may be had to the rules which have been made . . . under the authority of the Act, and if we find that in the rules any particular construction has been put on the Act, that it is our duty to adopt and follow that construction,"...

Ex facie the contention appears to have some force but as we shall indicate presently it. will not bear close scrutiny and it will be difficult to accept the same. In the first place, the Rules framed under the enactment can be resorted to in aid for the construction of the Act or any of its provisions only if the construction of the Act or any particular provision thereof is ambiguous or doubtful on any point and this position has been emphasised by the passage in Maxwell on which reliance has been placed by Mr. Singhvi himself. In the instant case, therefore, unless the relevant provisions of the Act viz. Sections 11, 12 and 19, read together, could be regarded as ambiguous or doubtful on the point at issue, recourse to Rule 4 and Form A prescribed thereunder would not be permissible. The construction of these three relevant sections together admits of no ambiguity on the point at issue before us, for on a true construction of these provisions the legislative intent is clear that the conditions of eligibility specified in Section 19(ii), (Hi) and (iv) are not conditions precedent to the making of the application. Secondly, though it cannot be disputed that MRTU & PULP Rules, 1975 framed under and in accordance with the provisions of Section 61 of the Act would be and are statutory rules having the force of law, these Rules would! unquestionably amount to subordinate piece of legislation and as such must yield to the parent legislation and in any event cannot overreach or run counter to the clear intendment, express or implied, of the Act. We have already come to the conclusion that on a true construction of the relevant provisions of the Act viz. Sections 11, 12 and 19 of the Act the Legislature has by necessary implication clearly intended that only the conditions specified in Section 11(1) are the conditions precedent to the maintainability of the application for recognition, while the conditions of eligibility specified in Section 19(ii), (Hi) and (iv) are not to be regarded as conditions precedent to the maintainability .of the application for recognition but are conditions of eligibility which could be satisfied or complied with by the applicant-union even during the pendency of the application for recognition before the actual grant of recognition is made. Form A prescribed under Rule 4, if at all it suggests that the compliance with the conditions specified in Section 19(ii), (Hi) and (iv) is a condition precedent to the making of

the application, would be running counter to the clear intendment of the parent provision and as such would be of no effect. Thirdly, the making of the application in the prescribed form does not appear to be sine qua non for obtaining recognition under the Act and if that be so, in cases where recognition could be obtained without making an application in the prescribed form, there will be no question of compliance with the requirements of Section 19(ii), (iii)- and (iv) being regarded any condition precedent. In this behalf reference may be made to the provisions of Section 12(3) of the Act under which it has been provided that the opposing union (union opposing the grant of recognition to the applicant-union) having the largest number of the employees employed "in the undertaking has merely to notify to the Industrial Court its, claim to be registered as a recognised union for such undertaking and if in the proceedings conducted by the Industrial Court u/s 12 (initiated by the applicant-union) the Court is satisfied that the opposing union satisfies the conditions specified in Section 11 and also complies with the conditions specified in Section 19, it shall grant such recognition to the opposing union. In other words, compliance with Section 19(ii), (iii) and (iv) is to be proved by the opposing union during the inquiry conducted u/s 12. Under the Explanation to Sub-section (3) of Section 12 it has been provided that for the purpose of Sub-section (3) the opposing union shall be deemed to have applied for recognition in the same calendar month as the applicant-union. The Explanation emphasises two aspects: 0) that in fact there is no regular application in the prescribed form filed by the opposing union before the Court and" (ii) therefore by legal fiction the opposing union shall be deemed to have filed the application for recognition in the same calendar month as the applicant-union. The deeming provision is clearly intended for the purpose of considering the question whether during the whole period of six calendar months immediately preceding the calendar month in which it is deemed to have applied the opposing union has the minimum 30 per cent, membership or not and whether during the six months immediately preceding the date of the deemed application the opposing union has indulged in unfair labour practices specified in Section 12(6) of the Act. In other words, in fact no application in the prescribed form is required to be filled or made by the opposing union to obtain recognition but such opposing union can obtain recognition u/s 12(3) by merely notifying to the Industrial Court its claim for recognition in the concerned undertaking. It will thus appear clear that at least Section 12(5) contemplates cases where without filing any application in the prescribed form recognition could be obtained by the opposing union, and this clearly suggests that the filing of an application in the prescribed form, cannot be regarded as sine qua non for obtaining recognition and if that be so, it; would be an indication that the State Government while framing Rule 4 and prescribing Form "A" did not intend that by reason of the contents of the prescribed form the requirements of Section 19 (ii), (iii) and (iv) should be regarded as conditions of eligibility the compliance whereof would be a condition precedent to the making of the application for recognition. Fourthly it is not possible to accept the submission that Clauses 7 and 11 of the prescribed form necessarily suggest that the compliance with the

requirements of Section 19(ii), (Hi) and (iv) is a condition precedent to" the making of the application for recognition. In the first place, it is not as if that all the particulars contained in Form "A" lay down or relate to the conditions of eligibility enabling a union to obtain recognition. To the extent to which the particulars or statements in Form "A" relate to items covered by Section 11(1) the same will have to be regarded as conditions precedent for an application for recognition and if those items are not satisfied, the application for recognition would not be maintainable. Ordinarily while prescribing the form for application care is usually taken to see that the prescribed form becomes applicable and covers all conceivable situations, that may arise in future and it is from this angle that Clauses 7 and 11 will have to be regarded. There are many items or particulars in Form A, which will have to be regarded as statements of facts obtaining in a given situation; for instance, Clause 4 of the prescribed form recites that "at a general meeting of the members of the applicant-union/ meeting of the Executive Committee of the applicant-union which was held at ... on ... day of ... 19 ... it was decided that the union should apply for registration as a recognised union for ... (particular undertaking)." It cannot be suggested that if in fact no such meeting was held or after holding such meeting no reference to it was made while making the application for recognition, recognition should be refused to the applicant-union. It would ;be permissible for a union to- hold such meeting and obtain the necessary authority to apply for recognition after the application is filed and to prove that fact during the pendency of the application. In other words, Clause 4 suggests that if a meeting of the union was held at which a decision was taken that the union should apply for recognition, such fact should be stated in the application for recognition. Similarly, the statements contained in Clauses 7 and 11 of the prescribed form could be regarded as statements which could be made it" the facts stated therein, obtained in a given situation. This aspect will become further clear if Clause II(ii) of the prescribed form "A" is carefully scrutinised. The particulars required to be stated under Clause 11(ii) are the particulars relating to various dates during twelve months" proceeding the date of the application on which the Executive Committee meetings have been held, whereas all that Section 19(47) of the Act requires is that the union seeking recognition must have a provision in its constitution for holding three monthly meeting of the Executive Committee and must observe the same and that u/s 12(2) of the Act the Industrial Court must be satisfied that the union seeking recognition complies with such provision in the constitution, that is to say, this provision of the constitution of holding three monthly meeting of the Executive Committee is being complied with by the applicant-union. There is no provision in Section 19(ii) to suggest that the applicant-union must have held three monthly meeting of its Executive Committee during the twelve months preceding the date of the application. Even so, Clause 11 (ii) of the prescribed form suggests that particulars of various dates, during twelve months preceding the date of the application on which the Executive Committee meetings have been held should be stated. Obviously Clause 11 (ii) in the prescribed form is intended to apply to a case where twelve

months have elapsed since the coming into force of the Act and/or since after the incorporation of the relevant provision in, its constitution so that the Industrial Court could verify whether the applicant-union is complying with the said requirement of the constitution as is specified in Section 19(ii) during the said twelve months. Looked at from this angle, Clauses 7 and 11 of the prescribed form need not be read as running counter to the clear intendment of the parent provision contained in Sections 11, 12 and 19 of the Act read together but could be read as the applicant-union making statement of fact as respects the particulars covered by those clauses answering the correct situation that may be obtaining in regard to such particulars. Clauses 7 and 11 of the prescribed form, therefore, if read harmoniously with the relevant parent provision contained in the Act in the aforesaid manner, do not, in our view, suggest that the compliance with the requirements of Section 19(ii), (iii) and (iv) is a condition precedent to the making of the application for recognition. For the aforesaid reasons, the contention based upon the contents of the form "A" prescribed under Rule 4 of MRTU and PULP Rules, 1975 cannot avail the petitioner-company.

14. Having regard to the aforesaid discussion, we are clearly of the view that the requirements of Section 19(ii), (iii) and (iv) of the Act are not the conditions precedent to the filing of the application for recognition by a trade union u/s 11 of the Act but the said requirements could be complied with even during the pendency of such application: but must be complied with before the actual grant of recognition is made to it.

15. In view of the aforesaid conclusion of ours on the first point, we shall now deal with the two points raised by the petitioner-company on the facts of the instant case. It was contended that the requirements of Section 19(ii) and (iv) had not been complied with by the applicant-union. As regards the former requirement the contention was that the applicant-union on its own showing had not held its Executive Committee meetings at intervals of not more than three months between December 15, 1974 and May 21, 1975. As stated earlier, the application for recognition was made on December 15, 1975 and in this application particulars of Executive Committee meetings held by the union during the twelve months preceding the date of the application were furnished in Clause 11 (ii) of the application, From these particulars it "became clear that from May 25, 1975 onwards upto December 6, 1975 the Executive Committee meetings were held almost every month, but the non-observance of the requirement of Section 19(ii) related to the period between December 14, 1974 and May 21, 1975 during which no meetings of the Executive Committee were held. The Industrial Court has taken the view, and in our view rightly, that since such non-observance related to a past period, that is to say, had occurred during the period prior to the coming into force of the Act, that would not be a ground for disallowing recognition that was sought by respondent No. 2. It is true that it is open to the Legislature to provide for refusal of recognition on the ground of such past non-observance, that is, non-observance during the period prior to the

coming into force of the Act and if the Legislature so provides for it, such non-observance would be a ground for disallowing recognition to the applicant-union but, in our view, there is nothing in the Act or in the relevant section thereof to suggest that such past non-observance, that is to say, non-observance during the period prior to the coming into force of the Act has been made a ground for refusal of recognition. In the absence of any such provision in the Act, it would be reasonable to hold that such past non-observance would not be a ground for refusing recognition. In fact, u/s 12(2) all that the Industrial Court is required to do during the enquiry contemplated by that section is to come to the conclusion that the applicant-union also complies with conditions specified in s. 19 of the Act, which must mean that the Industrial Court must be satisfied that the applicant-union is complying with the conditions of Section 19. Since in the instant case right from May 21, 1975 onwards up to the date of the application the Executive Committee meetings of the applicant-union were being held almost every month, it would be difficult to come to the conclusion that the applicant-union was not complying with the requirement of Section 19(ii) and in our view, the Industrial Court was right in holding that non-observance of the requirement of Section 19(ii) which pertained to the period prior to the coming into force of the Act, was immaterial or irrelevant. As regards the requirement of Section 19(iv) the petitioner-company contended that even the constitution of the applicant-union did not contain a provision with regard to the matter covered by Clause (iv) of Section 19. In reply it was stated on, behalf of the applicant-union that the constitution has been subsequently amended so as to satisfy the requirement of that clause. It does appear that subsequent to the filing of the application for recognition the constitution of the applicant-union has been amended so as to include a provision pertaining to the matter specified in Clause (iv) of Section 19 but the same has yet not been approved by the Registrar of Trade Unions. It was, therefore, urged by Mr. Singhvi that unless the Registrar's approval to the alterations in the constitution was obtained, the amendment could not be said to be effective and as such the requirement of Section 19(iv) could not be said to be satisfied by the applicant-union. It must however be stated that this aspect of the matter was not canvassed before the Industrial Court and the only question that was considered by the Industrial Court was whether the amendment of the constitution satisfying the requirement of Section 19(iv) (presuming it to be complete and effective) could be made during the pendency of the application or whether such amendment ought to have been made on or before making an application for recognition and on that question the Industrial Court took the view that it was permissible to the applicant-union to satisfy the requirement of Section 19(iv) even during the pendency of the application but before the grant of recognition was made. The aspect whether the amendment made in the constitution satisfying the requirement of Section 19(iv) has become effective or not, was not argued or considered by the Industrial Court and in our view, that question will have to be gone into and considered by the Industrial Court when the application for recognition will be finally heard and decided by it.

16. Turning to the second question that has been posed for our determination Mr. Singhvi appearing for the petitioner-company pointed out that the petitioner-company in its complaint filed on February 3, 1976 u/s 28 of the Act had complained of unfair labour practices on the part of respondent No. 2 and it was alleged that the applicant-union had, subsequent to the filing of the application for recognition, indulged in unfair labour practices listed at items Nos. 1, 2(b) and 5 of Schedule III to the Act and had obtained an ad interim injunction restraining the applicant-union and its office bearers, servants and agents from instigating the petitioner-company's workers to indulge in acts of violence and from threatening or assaulting its managerial or supervisory staff and it was contended on behalf of the petitioner-company that its allegation that respondent No. 2 had committed unfair labour practices should be enquired into first before granting recognition because if the allegations were proved, that would disentitle respondent No. 2 to get recognition. It was further contended during the pendency of the application for recognition, it would defeat the very objects of the enactment if the Court refuses to take notice of such unfair labour practice on the part of the applicant-union and grants recognition. Mr. Singhvi pointed out that the Industrial Court has negatived these submissions made on behalf of the petitioner-company and has taken the view that the only grounds on which recognition could be refused even if the applicant-union was otherwise eligible for recognition were those that had been mentioned in Sub-sections (5) and (6) of Section 12 of the Act and that any unfair labour practice which was "not be taken into account while considering the question of granting recognition. He further pointed out that the Industrial Court has further taken the view that Section 13 of the Act sets out the grounds on which recognition already granted could be cancelled, that some of the grounds for cancelling recognition deal with the eligibility conditions while others deal with the commission of unfair labour practices leading to de-recognition and that the recognition could be refused only if want of eligibility arose during the pendency of the application but not on the other grounds pertaining to the commission of unfair labour practices mentioned in Section 13 of the Act. Mr. Singhvi challenged this view of the Industrial Court principally on the ground that non-consideration of the grounds pertaining to the commission of unfair labour practices occurring during the pendency of the application for recognition would lead to absurd results not contemplated or intended by the Legislature and in this behalf he pointed out that one of the absurd results would be granting of recognition by the Industrial Court to the applicant-union on a particular date and derecognition the said union on the following day in view of unfair labour practices that may have been committed by it during the pendency of the application. He urged that such a result could never have been intended by the Legislature. He, therefore, urged that the Industrial Court ought to have held that while considering the question of granting recognition u/s 12 of the Act the Industrial Court should enquire into any unfair labour practice allegedly committed by the applicant-union after the filing of the application but during its pendency and if proved, should, in view thereof, refuse recognition.

17. In order to appreciate the contention urged by Mr. Singhvi before us it will be necessary to consider the provisions of Sections 12 and 13 of the Act together. We have already set out the provisions of Section 12 verbatim in the earlier part of our judgment. Section 13 provides for cancellation of recognition and suspension of the rights of a recognised union and that section runs as follows:

13. (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 u/s 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 interests of employees, but in the interests of employer to the prejudice of the interests 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, is cancelled; or

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

It will appear very clear that Section 13 sets out the grounds on which recognition already granted to a Union could be cancelled, that some of the grounds; for cancelling recognition deal with eligibility conditions while some others deal with the commission of unfair labour practices leading to derecognition and there is no doubt that the Industrial Court has taken the view that while considering the question of granting recognition u/s 12 of the Act recognition could be refused only if lack of eligibility has arisen during the pendency of the application but not on the other ground pertaining to commission of unfair labour practice. Mr. Damania appearing for the applicant-union has sought to sustain the aforesaid view of the Industrial Court principally on two grounds. In the first place, he pointed out that u/s 11(2) it has been

provided that every application for recognition shall be disposed of by the Industrial Court as far as possible within three months from the date of the 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 situate in the same local area and in other case within four months. He urged that from this provision and the provision contained in Section 12(5) the legislative intent is clear that granting of recognition to a trade union having the largest membership, of employees employed in the particular undertaking, subject to the minimum qualifying membership of 30 per cent., is a matter which should be disposed of by the Industrial Court under this Act as expeditiously as possible and the Legislature has provided that applications for recognition should be disposed of as far as possible within three months and in certain cases within four months as granting of recognition facilitates collective bargaining in industrial disputes. He, therefore, urged that if the Industrial Court while holding an enquiry into an application for recognition were to undertake a detailed or full-fledged enquiry into any unfair labour practice allegedly committed by a trade union subsequent to the filing of the application, it would entail inordinate delay which would defeat one of the objectives of the Act viz. speedy disposal of applications for recognition. Secondly, he urged that Sub-section (6) of Section 12 was a complete answer to the contention urged on behalf of the petitioner-company in this behalf, for, according to him, Sub-section (6) of Section 12 contains an express provision enjoining a duty upon the Industrial Court not to recognise any union if at any time within six months immediately preceding the date of the application for recognition the Union has indulged in the unfair labour practice specified therein, namely has instigated, aided or assisted in the commencement or continuation of a strike which is deemed to be illegal under this Act. What has been urged by him is that in view of such express provision in Section 12(6) by necessary implication the Legislature must be taken, to have intended that no enquiry into the unfair labour practice of the type specified in Sub-section (6) if committed after the filing of the application for recognition and no enquiry into any other type of unfair labour practice if committed subsequent to the filing of the application for recognition should be undertaken by the Industrial Court while considering the question of granting recognition. He, therefore, urged that the Industrial Court was justified in taking the view that while considering the application for recognition, recognition should not be refused on the ground of commission of unfair labour practices allegedly committed by the applicant-union subsequent to the making of the application for recognition.

18. Having considered the matter carefully we are unable" to accept the contention of Mr. Damanlia that Section 12(6) is a complete answer to the contention urged on behalf of the petitioner-company as has been argued by him. Section. 13 not merely deals with the particular "unfair labour practice viz. instigating, aiding and assisting the commencement or continuation of a strike which is deemed to be illegal under this Act-[which unfair labour practice is

specified in Section 13(1)(v)]-but also deals with all other types of unfair labour practices in Sub-section (2) and even under Sub-section (2) though a lesser punishment by way of suspension of rights is indicated for commission of any unfair labour practice other than, the one specified in Section 13(1)(v), the punishment by way of cancellation of recognition is also prescribed for commission of such other unfair labour practices and at the highest it may be possible to say that by reason of particular specified unfair labour practice having been expressly dealt with in Sub-section (6) of Section 12 the Legislature might have intended to bar an enquiry into that type of unfair labour practice if committed after the filing of the application for recognition during the enquiry contemplated by Section 12 but the express provision contained in Section 12(6) can by no stretch of imagination be regarded as barring an enquiry into other types of unfair labour practices if they are committed after the filing of the application for recognition. Therefore, it is not possible to accept the contention of Mr. Damania that Section 12(6) is a complete answer to the contention urged on behalf of the petitioner-company. There is also considerable force in the contention urged by Mr. Singhvi before us that non-consideration of any of the unfair labour practices allegedly committed by the applicant-union subsequent to the filing of the application for recognition during the enquiry held u/s 12 of the Act, might lead to an absurd result as suggested by him. At the same time having regard to the provision of Section 11(2) of the Act it seems to us very clear that one of the objectives of the Act is speedy disposal of applications for recognition which would facilitate the process of collective bargaining between the management on the one hand and the employees on the other. Having regard to the said objective which is clearly spelt out in the enactment, we feel that it would be reasonable to take the view that while conducting an enquiry into an application for recognition u/s 12 of the Act any collateral enquiry into any unfair labour practice allegedly committed by the applicant-union subsequent to the filing of the application for recognition is bound to delay the completion of the enquiry u/s 12 of the Act, and should not be undertaken by the Industrial Court but exception should be made where the commission of any unfair labour practice is either admitted or is so patent as would need no investigation or inquiry, in which event the Industrial Court should take that fact into account and may, if it thinks fit, refuse recognition. Such a course, in our view, will cause prejudice to none, avoid the absurd result suggested and at the same time achieve the objective of the Act, namely, speedy disposal of applications for recognition. We answer the second question posed for our determination accordingly.

19. On the question as to whether the petitioner-company should have been permitted to raise the plea that respondent No. 2 could not seek recognition in respect of its workers working in the Communication Division Factory on the ground that the said factory was and is an electronic industry and not an engineering industry, we do not feel, that there is any warrant to interfere with the finding which the Industrial Court has recorded on the point. The Industrial

Court has elaborately discussed the pleadings and the material on record and has pointed out that no specific plea, that the Communication Division Factory was and is not an engineering industry had been raised by the petitioner-company in any of its pleadings and it was for the first time during the course of hearing when the preliminary objections were being dealt with that such a plea was sought to be raised by the petitioner-company. Apart from this aspect of the matter, it appears to us clear that all throughout in its pleadings the applicant-union has proceeded on the basis that all the three units, situate at Chandivli Estate constitute one factory and one undertaking of the petitioner-company and the applicant-union claimed cent per cent, membership amongst the employees in all the three units put together and this position, which was adopted by the applicant-union throughout, was never disputed by the petitioner-company in any of its pleadings. In other words, up to the date of trial of the preliminary issues that were pressed for decision by the petitioner-company both the parties seem to have proceeded on the footing that all the three units or divisions run by the petitioner-company at its Chandivli Estate constitute one factory and one undertaking for which recognition was sought by the applicant-union. In these circumstances, the Industrial Court, in our view, was right in refusing permission to the petitioner-company to raise the plea that respondent No. 2 could not seek recognition in respect of its workers working in the Communication Division Factory on the ground that the factory or unit was and: is an electronic industry and not an engineering industry.

20. In the result, subject to modification indicated above in the Industrial Court's view on, the second question posed for determination, the rule is discharged.

21. Having regard to the circumstances of the case there will be no order as to costs.