
(2013) 09 BOM CK 0083
In the Bombay High Court
Case No : Writ Petition No. 563 of 2013

Godrej And Boyce Shramik Sangh	APPELLANT
Vs	
Maharashtra Navnirman Kamgar Sena and Others	RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Citation : (2014) 1 ALLMR 82 : (2013) 139 FLR 959 : (2013) 4 LLJ 368 : (2014) 2 MhLj 382

Hon'ble Judges : M.S. Sonak, J;D.Y. Chandrachud, J

Bench : Division Bench

Advocate : R.S. Pai with Mr. Darshan Ashar instructed by Sanjay Udeshi and Co, for the Appellant; Bennet D'Costa for Respondent No. 1 and Mr. Neel Helekar with Mr. Hemant Telkar instructed by . Haresh Mehta and Co., for the Respondent

Final Decision : Dismissed

Judgement

D.Y. Chandrachud, J.—The Petitioner is a recognised Union in the undertaking of the Second Respondent in pursuance of a certificate of registration issued on 21 October 1982 under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The First Respondent filed an application u/s 14 on 19 January 2011 before the Industrial Court, seeking to be declared as a recognised Union for the undertaking instead and in place of the Petitioner. The application initially bore the date of 21 December 2010, but was eventually filed on 19 January 2011. u/s 14(3) read with Section 11(1), the relevant period with reference to which the applicant has to establish the required strength is six calendar months immediately preceding the calendar month, in which the application for recognition is made. Sub-Sections (1) to (4) of Section 14 provide as follows:

14. Recognition of other union:- (1) If any union makes an application to the Industrial Court for being registered as a recognised union in place of a recognised union already registered as such (hereinafter in this section referred to as the "recognised union") for an undertaking, on the ground that it has the

largest membership of employees employed in such undertaking, the Industrial Court shall, if a period of two years has elapsed since the date of registration of the recognised union, call upon the recognised union by a notice in writing to show cause, within thirty days of the receipt of such notice, as to why the union now applying should not be recognised in its place. An application made under this subsection shall be accompanied by such fee not exceeding rupees five as may be prescribed.

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

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

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

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

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

2. Since the First Respondent had made its application on 19 January 2011, the relevant period over which its membership would have to be determined was the months from July till December 2010. It appears that the application was

prepared for being filed on 21 December 2010 and hence, in paragraph 3 of the application figures of membership were disclosed for the period between June 2010 and November 2010. On 28 June 2011, the Petitioner filed its written statement stating that it is not clear whether the application was filed on 21 December 2010 or on 19 January 2011. Since the membership for the month of December 2010 was not disclosed, it was contended that the application was not maintainable and this should be tried as a preliminary issue.

3. On 26 July 2011, the First Respondent filed an application for amendment of the application stating that inadvertently the table in the application showed details of the membership from June 2010 to November 2010 and the Union sought to bring on record the correct list and correct number of members. The application for amendment was allowed on 12 March 2012 by the Industrial Court. After the application for amendment was allowed, the amendment was carried out and issues have been framed by the Industrial Court. Thereafter, evidence has commenced.

4. On 4 October 2012, the Petitioner moved an application for the appointment of an Investigating Officer for verification of documents of both the Unions. The application was dismissed by the Industrial Court on 19 January 2013 inter alia on the ground that the Court had already commenced recording evidence and it would not be appropriate at this stage to appoint an Investigating Officer for the verification of membership.

5. The Petition seeks to challenge both, the order dated 12 March 2012 allowing the amendment and the subsequent order dated 19 January 2013 rejecting the application for the appointment of an Investigating Officer.

6. Counsel appearing on behalf of the Petitioner submits that: (i) The provisions of Section 14 have been interpreted in the judgment of the Supreme Court in "Automobile Products of India Employees' Union Vs. Association of Engineering Workers, Bombay and others", The condition precedent for an application u/s 14 is that the membership of the applicant in the period of the six calendar months immediately preceding the month in which the application has been made, must be larger than the membership of the recognised Union; (ii) In the present case, though the application was filed in January 2011, the figures of membership were disclosed in the application between June and November 2010 and hence, the application would not be maintainable; (iii) The impugned order of the Industrial Court allowing an amendment of the application is, therefore, unsustainable; and (iv) Section 8 makes a provision for the appointment of an Investigating Officer and there was no reason or justification for the Industrial Court to decline the exercise of the discretion conferred upon the Court to do so.

7. On the other hand, it has been urged on behalf of the First Respondent that: (i) The application for amendment was at the pre-trial stage before the evidence commenced, and was to correct an inadvertent error. The application was prepared for being filed in the month of December 2010 and consequently

contained a disclosure of the membership between June and November 2010. However, since it was actually filed in January 2011, the relevant period of disclosure would be July to December 2010; (ii) The amendment which has been allowed does not change the basis or nature of the application because whether the First Respondent does or does not have the requisite membership for the relevant period between June and December 2010 is a matter to be determined on the basis of evidence; (iii) Whether the requisite membership exists or not over a relevant period is a question of fact on which evidence has already commenced; (iv) The Petition was filed in this Court in the month of March 2013, nearly a year after the order allowing the amendment and after the evidence has commenced; (v) Though the Industrial Court has a discretion in an appropriate case to appoint an Investigating Officer u/s 8 to assist the Court, there is no reason or justification to do so at this stage where evidence has already commenced. The Investigating Officer has no power to record evidence and it is rather strange that the Petitioner would choose a verification by the Investigating Officer in preference to evidence being recorded before a judicial body namely the Industrial Court. The effort on the part of the Petitioner is merely to protract the proceedings which must be borne in mind having due regard to the fact that under the Act recognition once granted has prospective effect and does not relate back to the application; and (vi) The Act does not contemplate a two tier process of adjudication by the Industrial Court of an application u/s 14 and now that the evidence has commenced, there is no reason or justification for the Court to direct a verification by the Investigating Officer.

8. The rival submissions fall for consideration.

9. Sub-Section (1) of Section 14 stipulates various requirements, these being as follows:

(i) a period of at least two years must have elapsed since the day of the registration of the recognised union;

-(ii) a period of one year should have elapsed since the date of disposal of the previous application for recognition of such union;

-(iii) the union must have satisfied the conditions necessary for recognition specified u/s 11; and in addition,

-(iv) its membership during the whole of the period of six calendar months immediately preceding the calendar month in which such application is made must have been larger than the membership of the recognised union;

-(v) the provisions of Section 12 (which also include the conditions specified in Section 19), are satisfied.

These requirements have been spelt out as conditions precedent to the making of an application u/s 14 in the judgment of the Supreme Court in Automobile Products (supra). Upon the filing of an application under Sub-section (1) of Section 14, the Industrial Court has to call upon the recognised union by a notice

in writing to show cause within thirty days of the receipt of the notice as to why the union now applying should not be recognized in its place. The period of thirty days is evidently directory. Subsection (2) calls for a preliminary scrutiny by the Industrial Court on the expiry of the period of notice under sub-section (1). If the Industrial Court finds that the application is in order, it has to publish and display a notice to consider the application on a date specified in the notice and to call upon the other union, if any, having membership of employees in the undertaking, the employer and other employees affected to show cause why recognition should not be granted. Thereafter, under Sub-section (3), the Industrial Court is empowered to hold such enquiry as it deems fit before it comes to the conclusion on whether the union applying for recognition complies with the conditions necessary for recognition as specified in Section 11 and that the membership was during the whole of the six calendar months immediately preceding the calendar month in which it made an application larger than the membership of the recognized union.

10. In the present case, the First Respondent made an application for amendment of its original application. The record indicates that though the application at one place bore the date of 21 December 2010, it was evidently filed as a matter of fact on 19 January 2011. The union applying for recognition in place of the Petitioner by its application sought to place on record the correct figures including for the month of December 2010. The application for amendment was allowed on 12 January 2012. Evidently, the Petitioner accepted the order on the application for amendment because subsequent thereto, the Petitioner applied on 3 October 2012 for the appointment of an Investigating Officer to verify the documents of the rival union. Evidently, the Petitioner was not aggrieved by the allowing of the amendment because it was on the basis of the order allowing the amendment that the Petitioner sought the appointment of an Investigating Officer. Even otherwise, there was no reason to disallow the amendment. Whether the First Respondent has the requisite strength over the period prescribed in the statute is to be decided on evidence. The order allowing the amendment does not suffer from any infirmity.

11. The Industrial Court, in our view, has furnished cogent reasons for declining to appoint an Investigating Officer. Undoubtedly, the Industrial Court does have the discretion to do so u/s 14(3) read with Regulation 79 of the Industrial Court Regulations, 1975. Section 14(3) empowers the Industrial Court to hold such enquiry as it deems fit (which may include recording of evidence of witnesses and hearing of parties). Regulation 79 provides as follows:

79. The Court will ascertain the points of dispute between the parties at the first hearing, and shall after hearing the parties ascertain whether parties desire to lead oral evidence; if so on what points after considering relevancy of such evidence in view of the rival cases put up by the parties. In case oral evidence is to be recorded, the Court may, if the evidence is likely to be voluminous, or on other grounds deemed fit by the Court, direct that witnesses may be examined

on commission by a Commissioner to be appointed by the Court. The Court may appoint any person or an Investigating Officer as the Commissioner for the examination of witnesses with necessary directions to the Commissioner. These directions shall specify the points in dispute on which oral evidence is to be recorded and the time within which it is to be recorded. If it is decided to have the evidence recorded before it, the Court may fix a date for recording evidence.

Regulation 79 empowers the Court to direct that witnesses may be examined on commission. Similarly, the Court is vested with a discretion to appoint any person or Investigating Officer as Commissioner for the examination of witnesses. Since this is a discretionary power conferred upon the Industrial Court, the discretion has to be primarily exercised by that Court. The High Court under Article 226 would not be justified in interfering with the order of the Industrial Court in the considered exercise of its discretion unless the exercise is shown to be perverse or contrary to law. In the present case, evidence has already commenced. There is one Investigating Officer at Mumbai who has been given charge of Industrial Courts at Thane and Pune. The appointment of an Investigating Officer, at this stage, was not in the interests of justice for the simple reason that it would only protract the trial. The trial has already commenced before the Industrial Court.

For these reasons, we are of the view that both the orders of the Industrial Court - the first order allowing the amendment application as well as the second order declining to appointment an Investigating Officer - were within jurisdiction. The order allowing the amendment has been passed as far back as on 12 March 2012, whereas the Petition before this Court was lodged only on 14 March 2013. In the meantime, the Petitioner has participated in the proceedings by seeking appointment of an Investigating Officer and as we have noted above, evidence has also been commenced at the trial. The interference of the Court, at this stage, in any event, is not warranted in the interests of justice. Whether the First Respondent has established the conditions for recognition u/s 14 is a separate matter on which a decision will be taken by the Industrial Court after the evidence is adduced. Hence, no case for interference under Article 226 is made out. The Petition shall accordingly stand dismissed. There shall be no order as to costs.