

(1994) 11 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 2396 of 1986

Indian Express Newspapers (Bom) Employees Union

APPELLANT

Vs

K.M. Desai and Others

RESPONDENT

Date of Decision : 08-11-1994

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 11

Citation : (1995) 71 FLR 54

Hon'ble Judges : K.K. Baam, J;Ashok Agarwal, J

Bench : Division Bench

Judgement

Ashok Agarwal, J.—Maintainability of an application filed by Respondent No. 2 - Union, u/s 11 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter reference to as "the MRTU & PULP Act"), is questioned in the present petition. Similarly the order passed by respondent No. 1, who is a Member of the Industrial Court, holding that the application is maintainable is also impugned in the present petition.

2. The matter pertains to respondent No. 3, Indian Express Newspapers (Bombay) Private Limited. It is a Newspaper establishment, publishing the Indian Express and the Financial Express which are English dailies, Loksatta, which is a Marathi daily and Samakalin, a Gujarati daily. It also publishes English Weekly screen and Marathi weekly Lokprabha.

3. The petitioners are a trade union registered under The Trade Union Act, 1926 and have been representing the working journalists and non-journalists employed with respondent No. 3 since 1953. It claims to have as its members an overwhelming majority of the employees of respondent No. 3. In 1981, respondent No. 2. Maharashtra General Kamgar Union, which is also a trade union registered under the Trade Unions Act, enrolled some of the employees of respondent No. 3, as its members. On 31st January, 1983 respondent No. 2 filed an application in the Industrial Court for recognition of itself in respondent No. 3

- Company. The application was numbered as Application (MRTU) No. 6 of 1983.

4. The petitioners, by their written statement, opposed the grant of application and claimed recognition for themselves. Respondent No. 3 also filed its written statement. The parties thereafter filed documents in support of their case. Amongst documents filed by respondent No. 2 was its Constitution and Rules, under which it functions. On perusing the Constitution the petitioners found that Schedule "A" to the objects of the Constitution did not bear an entry of the newspaper establishment or newspaper industry. The petitioners, therefore, on 11th March, 1986 filed an application raising a preliminary objection to the maintainability of the application filed by respondent No. 2. In the application the petitioners contended that as the Constitution of respondent No. 2 did not permit it to enroll employees from the newspaper industry as its members, respondent No. 2 could not represent employees of respondent No. 3 and hence the application for recognition was not maintainable. Respondent No. 2 filed its reply to the application inter alia stating that since they could enroll members from printing presses they could enroll members from printing presses they could enroll of respondent No. 3 as their members.

5. By a judgment and order dated 27th August, 1986 respondent No. 1 came to the conclusion that Schedule A of clause 2 (a) of the Constitution of respondent No. 2 did not use the word "newspaper establishment" or "newspaper industry". He further held that as there was no entry in the Bombay Trade Unions Regulations, 1927, as newspaper industry, respondent No. 2 could not have mentioned newspaper industry in its Constitution. He concluded that the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 provides for conditions of service for working journalists and not for all workers working in a printing press, and hence a narrow meaning could not be given to the word "printing press". He further held that as other publication which did not constituted a newspaper were also printed by respondent No. 3, it could not be considered as newspaper establishment and respondent No. 2 could enroll employees of respondent No. 3 as its members. Consequent upon the findings, the application of respondent No. 2, u/s 11 of the MRTU & PULP Act was held as maintainable.

6. Taking exception to the said order, the petitioner has preferred the present petition.

The short question that arises for consideration is whether respondent No. 2 is entitled, under the terms of its Constitution, to enroll as its members journalists and non-journalists employed by respondent No. 3. A copy of the Constitution of respondent No. 2 is annexed at Exhibit-A to the petition. The objects of respondent No. 3, as is evident from the Constitution, is to organise and unite the persons employed in the industries mentioned in Schedule (A) and to regulate their relations with their employers. Then follows Schedule "A" which describes the industries whose employees respondent No. 2 - Union can seek to introduce within itself as its members in order to regulate their relations with

their employers. Amongst the industries mentioned is the industry of printing press. It is apparent that the industry of newspapers and journals is conspicuously absent. Hence the short question which falls for our consideration is whether respondent No. 2 can legitimately enroll the employees of respondent No. 3 as its members on the strength of the entry "printing press". In this context it has to be noticed that respondent No. 3, which is a newspaper industry, apart from publishing daily newspapers, it also publishes weeklies. It, no doubt, uses a printing press for the purpose of publishing. That, however, is not the entire function of respondent No. 3. It is only one of its functions. Apart from the printing press, it has journalists as also non-journalists in their employment. Respondent No. 3 is a newspaper industry and it cannot be termed as part and parcel of printing press. In this context our attention is drawn to the list of industries appended to the Bombay Trade Unions Regulations, 1927. At serial No. 28, we have an entry "printing, publishing and allied industries". It is next pointed out that as far as the Constitution of Respondent No. 2 is concerned, it has included the industry of printing press and has omitted "publishing and allied industries". In our view, the omission is significant. What has been included is merely the business of printing press. It has not included within its compass the industry of newspaper which could have fallen in the entry "printing, publishing and allied industries". The publishing of newspapers has several functions apart from the function of printing. Hence merely because the printing press is one of the components of newspaper industry, it cannot be gainsaid that the entire newspaper industry is nothing other than a printing press. A printing press may be included in a newspaper industry. It may be one of the functions of a newspaper industry. However a newspaper industry cannot be equated with the "printing press" industry as publication of newspaper and periodical involves many more functions than are involved in printing. A printing press industry cannot include within its compass all the employees of respondent No. 3 who includes journalists and non-journalists who may have no role to play in the printing of newspapers and journals being published by respondent No. 3. In the circumstances, we are constrained to hold that the Constitution of respondent No. 2 does not permit it to enroll journalists and non-journalists employed by respondent No. 3 as its members. This being the position, what follows is that the application of respondent No. 2, for recognition of its union u/s 11 of the MRTU & PULP Act is not maintainable. The impugned order passed by respondent No. 1, taking a contrary view, is thus liable to be set aside. In view of our finding that the application of respondent No. 2, is not maintainable, the application, being Application (MRTU) No. 6 of 1983 is also liable to be dismissed.

7. In the result, the petition succeeds and the Rule is made absolute.

The impugned order dated 27th August, 1986 passed by respondent No. 1 in Application (MRTU) No. 6 of 1983 is set aside. The application of respondent No. 2 filed u/s 11 for recognition of its Union is found as not maintainable and consequently the aforesaid application is dismissed.

As far as the claim of the petitioner for being registered as a recognised union is concerned, the same will now be considered by the Industrial Court on its own merits and in accordance with law.

Respondent No. 2 will pay the petitioners the costs of the present petition.