

(1981) 09 BOM CK 0082

In the Bombay High Court

Case No : Misc. Petition No. 540 of 1978

Johnson and Johnson Ltd.

APPELLANT

Vs

All India Pharmaceutical Employees Union

RESPONDENT

Date of Decision : 16-09-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 11(2), 12, 13(1), 19

Citation : (1981) 43 FLR 335 : (1982) 2 LLJ 311

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. An interesting question as to whether recognition of a union can be cancelled under S. 13(1)(v) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (hereinafter referred to as the Act), for commencement of an illegal strike prior to the date of the recognition falls for consideration in this petition failed by the employer under Article 226 of the Constitution of India.

2. The facts, which are not in dispute can be stated briefly to appreciate the submission advanced on behalf of the petitioner. The petitioner-company manufactures sutures, surgical dressings, powder, etc., has its factories at various places in Bombay. Respondent No. 1 is one of the unions operating in the company undertakings. Respondent No. 1 union was recognised as a recognised union under S. 12 of the Act by an order dated August 24, 1977. The application for recognition was filed on November 3, 1976. During the pendency of the application before the Industrial Court, the respondent-union went on illegal strike on April 27, 1977. The strike on that day was declared as illegal prior to the date of recognition. Thereupon on September 5, 1977, the company filed an application before the Industrial Court for cancellation of the recognition as contemplated under S. 13 of the Act. The application was rejected by the Industrial Court by order dated March 1, 1978, and that has given rise to the

filing of the present petition.

3. As the question involved in the petition turns on the construction of S. 12 and 13 of the Act, it would be convenient to set out those Sections at this stage :

"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.

(2) If, after considering the objections, if any, that may be received under sub-s. (1) from any other union (hereinafter referred to as "other union") or employers or employees, if any, and if after holding such enquiry in the matter as it deems fit, the Industrial Court comes to the conclusion that the conditions requisite for registration specified in S. 11 are satisfied, and the applicant union also complies with the conditions specified in S. 19 of this act the Industrial Court shall, subject to the provisions of this section, grant recognition to the applicant union under this Act, and issue a certificate of such recognition in such form as may be prescribed.

(3) 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 the said other union has notified to the Industrial Court its claim to be registered as a recognised union for the undertaking, and if it satisfies the conditions requisite for recognition specified in Section 11, and also complies with the conditions specified in S. 19 of this Act, the Industrial Court shall, subject to the provisions of this section, grant such recognition to the 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.

(4) There shall not, at any time, be more than one recognised union in respect of the same undertaking.

(5) The Industrial Court shall not recognise any union, if it is satisfied that the application for its recognition is not made bona fide in the interest of the employees, but is made in the interest of the employer, to the prejudice of the interest of the employees.

(6) The Industrial Court shall not recognise any union, if at any time within six months immediately preceding the date of the application for recognition, the union has instigated, aided or assisted the commencement or continuation of a

strike which is deemed to be illegal under this Act.

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 S. 19; or

(iv) that the recognised union is not being conducted bona fide in the interests of employees, but in the interest of employer to the prejudice of the interest 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.

(2) The Industrial Court may 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, that it has committed any practice which is, or has been declared as, an unfair labour practice under this Act;

Provided that, if having regard to the circumstances in which such practice has been committed, the Industrial Court is of opinion, that instead of cancellation of the recognition of the union, it may suspend all or any of its rights under sub-s. (1) of S. 20 or under S. 23, the Industrial Court may pass an order accordingly, and specify the period for which such suspension may remain in force."

4. The Maharashtra Legislature passed the Act on February 1, 1972 providing for 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, and to define and provide for the prevention of

certain unfair labour practices, Chapter III deals with recognition of unions and S. 11 inter alia provides that any union which has for the period of six months immediately preceding the date of the application a membership of not less than 30 per cent of the total number of employees employed in the undertaking can apply to the Industrial Court for being registered as a recognised union, In other words, the pre-requisite of filing of the application is the membership of not less than 30 per cent for the period of six months prior to the date of the application. S. 11 demands the Industrial Court to dispose of the application within a period of three months from the date of filing of the application and in some cases within a period of four months. Section 12 provides for publication of notices calling upon any rival union having membership of employees in the undertaking to show cause as to why recognition should not be granted. Sub-section (2) of S. 12 inter alia provides that the Industrial Court after being satisfied with the conditions requisite for registration specified in S. 11 and that union has complied with the conditions specified under S. 19, shall grant recognition subject to the other provisions of the section. The relevant condition other than compliance with S. 11 and S. 19 of the Act is the one provided by sub-s. (6) of S. 12 of the Act. This sub-section provides that the union shall not be recognised if at any time within six months prior to the date of the application the union has instigated, aided or assisted the commencement or continuation of an illegal strike. In other words, the right of a union to get recognition under the Act is subject to the condition that such union has not indulged in any illegal strike six months prior to the date of the application.

5. Then comes S. 13 of the Act, which provides for cancellation of recognition and suspension of rights of a recognised union. Sub-section (1)(v) of S. 13 provides that if a recognised union has instigated, aided or assisted the commencement or continuation of a strike, which is deemed to be illegal under the Act, then the Industrial Court shall cancel the recognition after giving notice to such union. It is not in dispute that the provisions of this sub-s. (1)(v) of S. 13 would come into operation if a recognised union indulges in illegal strike after the date of recognition. The dispute is centered round in respect of period commencing from the date of filing of the application for recognition and the date on which the recognition is granted. The petitioners are claiming that this sub-section would attract and recognition of a union can be cancelled even if such a union has instigated, aided or assisted an illegal strike prior to the date of recognition. In other words, during the interregnum between the date of filing of the application and the date of recognition, if the union has aided or instigated or assisted an illegal strike, then though the recognition, was granted it could be cancelled for the misdeeds done prior to the date of recognition. The petitioners strongly rely upon the expression "that it has instigated" in this sub-rule to claim that the reference is not restricted to the misdeeds of the recognised union subsequent to the date of recognition but reference to such misdeeds committed prior to the date of recognition. The union on the other hand claims that the plain reading of S. 12 provides that recognition could be denied provided the

union seeking recognition has aided or assisted an illegal strike at any stage six months prior to the date of the application. The union claims that sub. S. (1)(v) of S. 13 must be restricted to the misdeeds of the union committed after the date of recognition. It is urged that the Legislature very deliberately did not provide for any disability to the union for having aided or assisted an illegal strike during the pendency of the application for recognition, because the Legislature realised that the recognition would be granted or refused and application would be disposed of within a period of three months. It is urged that even assuming that there is a lacuna in the Legislation, it is not permissible for the Court to fill up that lacuna by putting an artificial construction on the provisions of Ss. 12 and 13 of the Act. In my judgment, the submission urged on behalf of the union deserves acceptance.

6. Sub-section (2) and sub-s. (3) of S. 12 requires the Industrial Court to ascertain whether the conditions for registration specified in S. 11 are satisfied and the conditions specified in Section 19 are complied with by the union on the date of recognition. The requirements of Section 11 are in respect of strength of membership six months prior to the date of application, while conditions under S. 19 require a union seeking recognition to observe that the membership subscription is not less than fifty paise per month and the Executive Committee meets at intervals of not more than three months and all resolutions passed by the Executive Committee are recorded in the minute book and an auditor appointed by the State Government shall audit the accounts at least once in the financial year. Sub-section (3) also requires that the Industrial Court must satisfy that every conditions set out in S. 12 are fulfilled by the union seeking recognition and the important condition is that the union seeking recognition has not instigated, aided or assisted an illegal strike six months preceding the date of the application. The Legislature has not provided for disability to the unions which instigate, aid or assist an illegal strike during the pendency of the application, while sub-s. (3) of S. 12 requires the Industrial Court to satisfy that the conditions under S. 11 and S. 19 of the Act are fulfilled on the date of the recognition. Sub-section (6) of S. 12 requires the Industrial Court to find out whether the union seeking recognition has indulged in an illegal strike during the pendency of the application. Shri Singhavi, the learned counsel appearing in support of the petition urges that the Legislature could not have intended this result because if a disability is foisted upon the union for going on illegal strike during the period of six months prior to the date of application, then such a union could not be in a better position by going on strike during the subsistence of the application. The argument at the first blush appears to be very attractive, but on a detailed consideration of the scheme of the Act it is not possible to assume that the Legislature expected the Industrial Court to determine as to whether a recognition should be granted or not because a union seeking recognition has gone on illegal strike during the pendency of the application. As mentioned hereinabove, the Legislature expected that the application for recognition would be disposed of within a period to three months and the

Legislature may have chosen not to provide for creation of any disability in a union seeking recognition during that period.

7. Shri Singhavi urges though the Legislature has not provided for disability for indulging in an illegal strike during the subsistence of the application, the Legislation has provided for cancellation of recognition for indulging in such activities during the pendency of the application. The learned counsel submits that sub-s. (1)(v) of S. 13 of the Act enables the Industrial Court to cancel the recognition if the recognised union has instigated aided or assisted the illegal strike. The submission is that it may not be open for the Industrial Court to deny recognition for misdeeds during the pendency of the application, but an action can be taken of cancellation of recognition for those misdeeds. It is difficult to accept this line of reasoning. If recognition is not to be denied for the misdeeds for the misdeeds of the unions seeking recognition during the pendency of the application, then there is no rationale why such a recognition should be cancelled on the next day of recognition. Once the entire process for granting recognition has gone through, then the Legislature could not have desired that such recognition should be cancelled for act done prior to the date of recognition. In my judgment, sub-s. (1)(v) of S. 13 of the Act would have application only if the recognised union has instigated, aided or assisted the commencement of an illegal strike, The provisions of S. 13 of the Act are attracted for any act done by a recognised union and not by a union.

8. Shri Singhavi very fairly invited my attention to the decision of the Division Bench of this Court reported in *Forbes Forbes Compbell & Co. Ltd. Bombay v. Shri K. G. Chitale, Presiding Officer, Industrial Court, Bombay and another*, ITR 1977 Bom. 1745, where an incidental question arose for consideration. The Division Bench after considering the relevant provisions of S. 12 and S. 13 of the Act observed as follows :

"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 S. 13(1)(v) but also deals with other type of unfair labour practices in sub-s. (2) and even under sub-s. (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 S. 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-s. (6) of S. 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 S. 12(6) can by no stretch of imagination be regarded as barring an inquiry 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 S. 12(6) is a complete answer to the contention urged on behalf of the petitioner - company. There is also considerable force in the contention by Mr. Singhavi 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 under S. 12 of the Act might lead to an absurd result as suggested by him. At the same time having regard to the provisions of S. 11(2) of the Act it seems to us very clear that one of the objectives of the Act is speedy disposal of application 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 under 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 under 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 enquiry, 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."

The decision recorded by the Division Bench of this Court carried in appeal before the Supreme Court and the Judgment of the Supreme Court is reported in *Forbes Forbes Campbell and Co., Ltd. Vs. Engineering Mazdoor Sabha*, . Though the judgment of the High Court on the other point was overruled, the Supreme Court did not consider the finding of the High Court on the construction of Ss. 12 and 13 and the questions as to whether the illegal strike by the union seeking recognition during the pendency of the application can be considered while granting the recognition or for cancelling recognition.

9. In my judgment, in view of the decision of the Division Bench it is not open for the Industrial Court to consider the alleged misdeeds of the union seeking recognition during the pendency of the application unless it is admitted or so clear that no inquiry is required. Even if it is found that the union seeking recognition has aided, assisted or instigated an illegal strike during the pendency of the application for recognition, that would not enable the Industrial Court to cancel the recognition on that count. Section 13(1)(v) of the Act would be attracted only if a recognised union instigates, aids or assists in an illegal strike after the date of recognition. As in the present case it is not in dispute that the illegal strike resorted to by the union for one day only was prior to the date of recognition, that would not entitle the company to seek cancellation of recognition under S. 13 of the Act. The order passed by the Industrial Court is in order and requires no interference.

10. Accordingly, the petition fails and the rule is discharged. In the circumstances of the case there will no order as to costs.