

(1984) 11 BOM CK 0077

In the Bombay High Court

Case No : Writ Petition No. 4524 of 1984

Kamgar Utkarsha Sabha

APPELLANT

Vs

Benett Coleman and Co. Ltd. and Others

RESPONDENT

Date of Decision : 06-11-1984

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 12, 13

Citation : (1994) 3 LLJ 798

Hon'ble Judges : Sawant, J;Kotwal, J

Bench : Division Bench

Advocate : Sawant and S.S. Pathak, for the Appellant; Sarosh Kapadia, instructed by , Sarvashri Kanga and Co. for R1 and S.J. Deshmukh and German Fernandes for R2, for the Respondent

Final Decision : Dismissed

Judgement

Sawant, J.—The grievance of the petitioner - Union is that the Industrial Court aid not grant the request made by it to hear its application dated 3.8.1984 filed u/s 11 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour practices Act, 1971 (hereinafter referred to as the Act) for its recognition along with the application of the 2nd respondent Union filed by it in 1980 for the very same purpose. The order refusing to hear the two applications together is impugned in this petition.

2. We do not find any substance in this petition for the following reasons:

A plain reading of the scheme for recognition of Unions given in Chapter II! of the Act shows that its object is to avoid mushroom growth of unions and to secure industrial peace. Towards this object, a provision has been made that in one Undertaking there shall not be more than one recognised Union and once a Union is recognised it alone will have the right to represent the workers in their disputes both in negotiations with the employer as well as in adjudication proceedings before the Industrial Court. Once a Union is recognised, it is not to

be displaced by temporary or transitory fluctuations in its membership. To dislodge the Union from its status as a recognised Union the conditions and the procedure laid down in the Act should be complied with. So also, if another Union wants to be recognised in place of a Union which is already recognised, it has to satisfy the conditions and comply with the procedure laid down for the purpose. Neither the recognition nor its cancellation are to be secured lightly.

3. Keeping this object in view, we have to interpret the provisions of Sections 11 and 12 of the Act which fall for consideration in the present case. Shri Sawant, the learned Counsel appearing for the Petitioner Union, contended that as on the date his Union made the application for recognition viz. 3.8.1984, the membership of the 2nd respondent Union had gone below 30% of the total number of employees employed in the 1st respondent-Undertaking. He further submitted that at present, it is the petitioner-Union which has a majority of membership from the said workmen and hence it will be in keeping with the object of the Act to direct the Industrial Court to hear the two applications together and decide the question of recognition of the Union on the basis of the comparative membership of the two unions on the day of the decision. As against this it was contended on behalf of the 1st Respondent-Undertaking and the 2nd respondent- Union that the relevant date for considering the membership of the Union applying for recognition is the date of its application and not of the decision of the application.

4. We are of the view that the provisions of Sections 11 to 14 of the Act make it abundantly clear that the membership of the applicant-Union has to be considered with reference to the date on which the application is made and not the date on which the application is decided. This is clear since Section 11(1) of the Act requires that the applicant-Union should have a membership of not less than 30% of the total number of employees in the undertaking during the whole of the period of six calendar months immediately preceding the calendar month in which it makes the application for recognition . It is only if it satisfies the said condition that it has a right to make the application for recognition. On receipt of such application, the Industrial Court has to make a preliminary scrutiny which undoubtedly includes the scrutiny of its claim to the 30% membership. It is only if the Industrial Court is satisfied, among other things, that the said condition is complied with by the applicant-Union that the Court causes a notice to be displayed on the board of the undertaking, declaring its intention to consider the application and inviting objections from the other Union or Unions, if any, having membership of employees in the undertaking as well from the employer. After the other Union and the employer submit their objections, if any, the Court has to hold a regular inquiry into the claim for recognition and the objections to the said claim. If the Court after holding such inquiry comes to the conclusion, among other things, that the conditions requisite for registration specified in Section 11 are satisfied, the Court proceeds to grant a certificate of recognition to the applicant-Union. On the other hand, if the Court comes to the conclusion that any other Union which has preferred its

objections to the notice issued by it before holding the enquiry has the largest membership of employees in the undertaking and if such other Union has notified to the Court its claim to be registered as a recognised Union and if that Union again satisfies among others, the conditions of Section 11 of the Act, the Court would grant recognition to such Union. These provisions" therefore make it clear that the date with reference to which the membership of both the applicant-Union as well as the other Unions has to be considered is the date on which the applicant Union has made the application-for recognition. To hold otherwise would mean that where the proceedings for recognition are pending, for one reason or the other, for a long time, different Unions may, apply at different times for recognition and thus, there would be no end to the proceedings for recognition.

5. Shri Sawant relied upon a decision of this Court reported in B.E.S.T. Workers" Union Vs. State of Bombay and Others, in support of his contention that when two Unions apply for recognition, although at different points of time, the two applications should be heard together. Admittedly, the said decision is under the Bombay Industrial Relations Act prior to its amendment. The amendment made to the relevant Section 13 shows that provisions similar to Section 11 of the Act have been incorporated in Sub-section (1) of Section 13 and correspondingly the proviso "Thirdly" has also been suitably amended. Instead of supporting Shri Sawant the changes brought about in the said Act since disprove his contention.

6. For all these reasons we are more than satisfied that the impugned order passed by the Industrial Court refusing to consider the application of the petitioner-Union filed on 3.8.1984 together with the application of the second respondent-Union filed in 1980 is both proper and valid and needs no interference from this Court.