
(1995) 07 BOM CK 0066

In the Bombay High Court

Case No : Writ Petition No. 2823 of 1995

Maharashtra Shramik Sena

APPELLANT

Vs

Gabriel India Ltd. and others

RESPONDENT

Date of Decision : 24-07-1995

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 11, 12, 13, 14, 19

Citation : (1995) 71 FLR 775 : (1996) 1 LLJ 639

Hon'ble Judges : V.P. Tipnis, J;K.G. Shah, J

Bench : Division Bench

Judgement

Shah, J.—By this writ petition, the petitioner questions the correctness, validity, legality, etc., of the judgment and order rendered by the Industrial Court, Bombay, on April 27, 1995 in Applications (MRTU) Nos. 37 and 49 of 1992. Those two were the applications filed before the Industrial Court by Respondent No. 2 herein, one was an application u/s 13 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the Act") and the other was u/s 14 of the Act. By the application u/s 13 of the Act, Respondent No. 2 prayed for the cancellation of the recognition granted to the petitioner. By the other application u/s 14 of the Act, Respondent No. 2 prayed for grant of its recognition. Both these applications filed by Respondent No. 2 having been allowed, the petitioner is in writ petition before us.

2. Having heard the learned counsel for the parties, we are more than convinced that there is no case made out for interference at our hands in our writ jurisdiction with the impugned judgment.

3. Section 13 of the Act contemplates that 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 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. So far as

the petitioner is concerned whose recognition has been cancelled by the impugned order, the relevant period admittedly is between March, 1992 and August 1992 i.e., the period of six months for the purpose of clause (ii) of sub-section (1) of Section 13 of the Act. According to Respondent No. 2, during the relevant period, the membership of the petitioner had fallen below the limit prescribed u/s 11 of the Act and, therefore, the recognition earlier granted to the petitioner was liable to be cancelled. Upon this application, the Industrial Court handed over the matter to the Investigating Officer Who, after Investigation, submitted his report. It is not in dispute before us that the Investigating Officer's report is not the final word in the matter, but it is only a piece of evidence which the Industrial Court has to scrutinise and that Court has to come to its own conclusion, on the relevant facts. In the present case, the Investigating Officer found against both the petitioner as also Respondent No. 2 in the matter of percentage of membership. The Industrial Court, after appreciating the evidence, disagreed with the Investigating Officer and found that the evidence warranted a finding that during the relevant period the membership of the petitioner had fallen below the minimum limit prescribed u/s 11 of the Act. That is essentially a finding of fact with which this Court in its writ jurisdiction will be extremely slow to interfere.

4. The Industrial Court has discussed the evidence in detail and has found that the evidence adduced before the Commissioner by several workers whom the petitioner claims to be its members, during the relevant period, positively indicated that those members had not paid any subscription to the petitioner at all for the relevant period and that, therefore, they were not the members of the petitioner-Union during the relevant period. The Industrial Court has observed in para 35 (first) of its judgment that those witnesses who had been examined before the Commissioner stated facts as regards the relevant period and they spoke about non-payment of the subscription fee to the petitioner during the relevant period. Thus, the Industrial Court has rightly confined the enquiry to the relevant period in terms of clause (ii) of sub-section (2) of Section 13 of the Act and we see no exception that could be taken to the finding recorded by the Industrial Court on that evidence.

5. The learned counsel for the petitioner was at pains to argue that it is the state of affairs of membership during the relevant period that should matter and not the state of affairs for a period subsequent to the relevant period nor should the facts stated by the witnesses at the enquiry be considered as conclusive on the actual state of affairs that existed during the relevant period. The proposition of law as canvassed by Mr. Singh, learned counsel for the petitioner, in abstract is undisputable. However as we see the judgment of the Industrial Court, it has confined the enquiry only to the relevant period on the basis of evidence brought on record. The Industrial Court has not found the strength of membership on the date when the evidence was recorded. It has adverted to the strength of membership of the respective-Unions during the relevant period of six months i.e., between March 1992 and August 1992. The approach of the industrial Court,

in our opinion, is un-exceptional.

6. The learned counsel appearing for the petitioner nextly submitted that by virtue of the second proviso to Section 13 of the Act, not only that the membership of the petitioner-Union should have fallen below the prescribed limit of thirty per cent during the relevant time but also that it should have continued to remain fallen below the prescribed limit during the month in which the show cause notice has been issued to the petitioner-Union. According to the learned counsel, even if in a given case, the membership of a recognised Union has fallen below the prescribed limit contemplated by Section 11 of the Act, the Industrial Court will not be justified in cancelling the recognition unless it is further established that during the calendar month in which the show cause notice contemplated by Section 13(1) is issued to that Union, its membership was below the prescribed limit. In the present case, in its pleadings, the petitioner has never contended that in the month of September 1992 when the show cause notice was issued to it, its membership was not not below the prescribed limit. There is a finding of the Industrial Court that for the six months preceding September 1992, which is the relevant period, the membership of the petitioner-Union had fallen below the prescribed limit. On the basis of this finding, and in the absence of any specific plea on the part of the petitioner in support of the submission that its membership in September 1992 had not fallen below the prescribed limit, it would be unrealistic to assume that in the month of September 1992, the membership of the petitioner had not fallen below the prescribed limit. We may mention here that not only that there is no pleading by the petitioner that in the month of September 1992, its membership had not fallen below the prescribed limit or to put it differently, in September 1992 its membership was above the prescribed limit, there is no evidence on record on the point led by the petitioner to show that in the month of September 1992 its membership was above the prescribed limit or that its membership was not below the prescribed limit. In that view of the matter even the second proviso to Section 13(1) of the Act fails to help the petitioner.

7. In view of what we have stated above, the order of the Industrial Court cancelling the recognition of the petitioner can by no logic, be faulted.

8. Coming to the second part of the challenge viz. that the Industrial Court could not grant recognition to Respondent No. 2, the learned counsel for the petitioner submitted that Respondent No. 2 was not entitled to get an order of recognition, for it has not complied with the requirement of Section 19 of the Act. It was submitted that as found by the Investigating Officer, the meetings of the executive committee of Respondent No. 2 were held on December 23, 1991, May 20, 1992, August 4, 1992, September 7, 1992, September 28, 1992 and October 12, 1992. According to the learned counsel for the petitioner, the time gap between the first and the second of the aforesaid meetings of the Executive Committee was only slightly short of five months where the statutory requirement is that the Executive Committee should meet at the intervals of not

more than three months. According to the learned counsel for the petitioner, Section 19(ii) enjoins upon the Executive Committee of Respondent No. 2 to hold its meetings at intervals of not more than three months, and that having not so done in case of the meeting that was held on May 20, 1992, Respondent No. 2 it had not complied with the requirement of Section 19 and, therefore, also, respondent No. 2 should not have been granted recognition.

9. In support of the submission, the learned counsel relied upon the decision of the Supreme Court in the case of Forbes Forbes Campbell and Co., Ltd. Vs. Engineering Mazdoor Sabha, . Relying upon the aforesaid judgment, the learned counsel submitted that the requirement of Section 19(ii) has a mandatory content which would admit of the departure by a day or two and not more.

In this connection, he relied upon the observations of their Lordships of the Supreme Court in para 8 of the aforesaid judgment. This is what their Lordships have, in this connection, said :-

"Section 19(2), read with Clause 11(2) of Form "A", prima facie suggests that any union which seeks recognition under this Act must observe the conditions necessary therefor. One of the conditions necessary is, according to from A, the holding, within the 12 months preceding the date of the application, of meetings of the Executive committee in terms of S. 19(2)".

Their Lordships of the Supreme Court further in the aforesaid para have observed as follows :-

"Taking an overall view of the provisions of law, viz., Ss. 11, 12 and 19 and R. 4 and form A, which must all be read together, we are satisfied that any union which seeks recognition and applies in that behalf must, when it applies, be able to convince the Industrial Court that it is qualified for recognition. This means that on or about the date on which it seeks recognition, that is the date of the application or at least the time when notice is served under S. 12, it possesses the percentage of members required and has its constitution in conformity with S. 19 and R. 4 and otherwise has complied with the requirements of Form A - in this particular case Cl. 11(2) of Form A. of course, we agree that Form A has to be read not rigidly but flexibly and with an amount of latitude. In that sense, substantial compliance will be sufficient. To make our point we may illustrate : supposing within 12 months prior to the application, meetings have been held as required by S. 19(2) but a day or two this side or that, it has tripped that does not disqualify. It is also possible to conceive of other inconsequential deviations. Such minor departures cannot have an invalidatory effect. However, the requirements we are concerned with in the present case are different. The constitution must provide for Government audit. This is mandatory. Likewise, the rules of the Union must provide for periodical meeting of the Executive Committee in terms of S. 19(2), not meticulously but substantially in terms thereof".

10. Now, these observations of their Lordships of the Supreme court themselves

amply make it clear that when Section 19(ii) of the Act postulates the meetings of the Executive Committee at intervals of not more than three months, that interval of not more than three months are not inviolable. What their Lordships pointed out is that there should be substantial compliance and some deviation here or there which is inconsequential will not in validate the prayer of a particular Union for recognition. In the present case, as between the first and the second meetings, as indicated by the Investigating Officer, in his report, there is a time gap of slightly less than five months. The period of three months has been exceeded by slightly less than two months. The question is whether, in the facts and circumstances of the case, the deviation should held to have a major consequence upon the request of Respondent No. 2 for recognition. As we see the order of the Industrial Court, the majority of the workers are with Respondent No. 2 and, in that context, if between the first and the second meetings of the Executive Committee, there is a time gap of slightly less than five months, that should not be considered to be a factor which would invalidate the prayer of Respondent No. 2 for recognition. As could be seen from the judgment relied upon by the learned counsel for the petitioner, a certain amount of latitude and deviation, in these matters, is permissible. The question whether that latitude should be of two days, ten days, 12 days, a month or two would all depend upon the facts and circumstances of the case. On the basis of the judgment relied upon by the learned counsel for the petitioner, it is just not possible to say that their Lordships of the Supreme Court by using the words "a day or two" laid down that not more than two days should be the period of deviation permissible. The fact that their Lordships have permitted deviation itself would go to show that the interval of "not more than three months" is not sacrosanct and the guiding factor would be whether by that deviation, any substantial consequence has followed which would disentitle the applying Union to be recognised. In the facts and circumstances of the case, as we see from the judgment of the Industrial Court, we do not think that from the deviation of less than two months from the concept of interval of not more than three months, there have followed any such consequences which would have required the Industrial Court to refuse the request of Respondent No. 2 for recognition.

11. The Industrial Court been conscious of this aspect of the matter and it has dealt with that in para 40 of its judgment and we broadly agree with the views expressed by the Industrial Court.

12. In view of what we have stated the writ petition has no merit and the same summarily rejected.