

(1995) 03 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 482 of 1995

Maharashtra State Transport Workers Federation (Intuc)

APPELLANT

Vs

Maharashtra State Transport Kamgar Sanghatana and Others

RESPONDENT

Date of Decision : 15-03-1995

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 11, 12, 19, 3

Citation : (1995) 71 FLR 424 : (1996) 1 LLJ 474

Hon'ble Judges : N.D. Vyas, J;G.D. Kamat, J

Bench : Division Bench

Judgement

Vyas, J.—The petitioner - Trade Union, which is a Federation of Trade Unions, has filed the present petition challenging the order dated 16th February 1995 passed by the Industrial Court recognising the 1st Respondent-Trade Union under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The greave men of the charge in the petition is that the application made by the 1st Respondent on which the impugned order has been passed, was not in accordance with the requirements as laid down under the provisions of Section 11 and 19 of the said Act; that the 1st Respondent-Union (hereinafter referred to as "the applicant Union") did not have minimum required membership of 30% and that the Industrial Court had no jurisdiction to grant recognition to more than one undertaking as it has been done by the Industrial Court. Briefly stated the facts giving rise to the present petition are required to be stated in order to appreciate the contentions raised by the petitioner before us.

2. On 26th October, 1976 the Government of Maharashtra issued a notification under proviso to Section 3(15) of the said Act recognising several undertakings of the State Transport Corporation who are respondent No. 3 before us. On 14th December 1984, the applicant upon filed an application for recognition under the provisions of the said Act. On 1st February 1985 the Petitioner-Union contested the said application by filing written statement on various grounds. Similarly, the

2nd respondent which is also a Trade Union, opposed the said application. On 26th June 1989 the Industrial Court was pleased to appoint an Investigation officer to investigate into the membership of respective Unions. On 20th June 1991, the Investigation Officer submitted his report. On 19th July 1991 the petitioner as well as the 2nd Respondent Union filed their respective objections to the report. All the parties were heard by the Industrial Court and by the impugned order dated 16th February, 1995, the Industrial Court granted recognition to the 1st Respondent-Union. Coming to the contentions raised before us, as far as the first contention as to non-compliance of the provisions of Sections 11 and 19 of the said Act is concerned, it was canvassed before us that under the provisions of Section 11 it had to be seen whether the applicant Union had membership of more than 30% or not. It was the submission of Dr. Kulkarni appearing for the petitioner that this was not done and the investigation report to that extent was totally erroneous inasmuch as it the Investigating Officer had verified the report in each and every case, he would have definitely come to the conclusion that the membership was much less than 30%. The Investigating Officer was appointed by the Industrial Court and he submitted his report on 20th June 1991. The Industrial Court came to the conclusion and in our opinion rightly, that the applicant Union had filed all the documents necessary to be filed and that the non-applicant unions viz., the petitioner and 2nd respondent Unions had not filed any records. Not only that, it has also been observed in the impugned order that the petitioner-Union did not even participate in the work of verification even though they were given notice. In any view of the matter, in our opinion, the Industrial Court has correctly come to the conclusion that the applicant-Union had more than 30% membership. The Industrial Court has in coming to the said conclusion rightly taken into consideration the objections taken by the petitioner as well as the 2nd Respondent-Union and it has come to the conclusion that although the report of the Investigating Officer showed that the applicant-Union had 38.42% membership even taking into consideration the objections raised by the petitioner as well as the 2nd Respondent-Union, the membership would come to at least 31.9% which was definitely higher than the minimum required. It has also been observed and it is not disputed before us that neither the petitioner nor the 2nd Respondent-Union led any evidence to prove their objections. Neither it is disputed that any objections were raised when the Industrial Court had asked the contesting Union to submit their say in respect of appointment of the Investigating Officer nor any records were produced either before the Investigating Officer or the Industrial Court to dispute the stand taken by the Applicant-Union. In view of this, we cannot agree with Dr. Kulkarni that the provisions of Sections 11 and 19 were not complied with.

3. The second contention which was canvassed before us was that u/s 3(15) the proviso empowers the State Government to include other concerns of the employer. It was his contention that the notification issued enumerated only 190 such other establishments and that however, the Investigating Officer had taken into consideration establishments which were not included in the notification. We

do not find any substance in this submission either for the reason that the notification which is issued and which is dated 26th October 1976 specifically says that the group of concerns comprising of all the Depots including workshops, Central Workshops, Central Office at Bombay Regional Offices, the Divisional Offices including the offices of the Executive Engineer and the Stores Division, Kurla of the Maharashtra State Road Transport Corporation and the Schedule in our opinion is illustrative in nature and not exhaustive. It was submitted on behalf of the applicant-Union that after the notification some of the establishments were bifurcated as a result thereof new establishments came into existence. Looking to the above object of the Act, which is meant to cover the undertaking in order to facilitate collective bargaining, we do not wish to give very restrictive meaning to the provisions of Section 3(15) and thus restrict the notification only to those establishments which are enumerated in the Schedule. Lastly it was submitted that the application was not made as per the provisions of the Act. It was the submission of Dr. Kulkarni that one Bhau Phatak who had signed the application was not legally elected office bearer of the Applicant-Union and hence the application was not maintainable. The Industrial Court, has, in our view rightly, after examining the record, come to the conclusion that not only Bhau Phatak but one Tusean also an office bearer, were elected as Honorary Members several years back and they were functioning as Office bearers of the Applicant-Union and that it was not necessary to re-elect them as Honorary Members every year. Significantly in the written statement filed by the petitioner to the application made by the applicant-Union u/s 11 of the said Act referring to Bhau Phatak, it is stated in the Written Statement that the petitioner-Union was admitting the said position.

4. Taking an overall view and keeping in mind the above object of the said Act which is for facilitating the collective bargaining, we are of the opinion that the present petitioner who has not chosen to apply for recognition nor even opted u/s 12(3) of the Act to be considered for recognition cannot be heard to complain that the provisions of the Act have not been complied with. Not surprisingly the 2nd Respondent-Union, also a Trade Union, and which is also a federation has supported the petitioner. In respect of the 2nd respondent also, the same could be said that they have also opted to remain out and not to stake claim for being recognised, and have chosen to support the Federation only to defeat the very object of the said Act. In view of the above, we see no substance in the petition and the petition is rejected.