

(1978) 06 BOM CK 0030
In the Bombay High Court
Case No : Spl. C.A. No. 2530 of 1976

Pfizer Employees Union, Bombay

APPELLANT

Vs

Mazdoor Congress, Bombay and Others

RESPONDENT

Date of Decision : 19-06-1978

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 10, 10(1), 10(2), 10(3), 11

Citation : (1978) 80 BOMLR 735 : (1980) 1 LLJ 65 : (1979) MhLj 571

Hon'ble Judges : P.B. Sawant, J;N.B. Naik, J

Bench : Division Bench

Judgement

Naik, J.—This is a petition under Arts. 226 and 227 of the Constitution of India challenging the order dated March 31, 1976, passed by the President, Industrial Court, Maharashtra, Bombay, under the provisions of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (the Act for short).

2. The facts giving rise to this petition are briefly these :

3. Pfizer Ltd., Bombay, respondent No. 2, is a public limited company incorporated in India under the Indian Companies Act, which shall be hereafter referred to as the company. The head office of the company is situated at Express Towers, Nariman Point, Bombay-21. The said company has its factory at Thana near Bombay, and a depot for storing goods at Darukhana, Reay Road, Bombay. The said company employ about 130 workmen in its head office, about 25 workmen at its depot at Reay Road and about 1,200 workmen at its factory at Belapur road, Thanna. The petitioner is a trade union registered under the Indian Trade Unions Act, 1926 and is a recognised union under the code of discipline for the factory, the depot and the head office. Respondent No. 1 Mazdoor Congress, Bombay, which shall be hereafter referred to as the applicant-union, is also a trade union registered under the Trade Union Act, 1926, but the said union is not

recognised by the company as a bargaining agent for the workmen. The petitioner-union has been representing the workmen of the said company for the last more than 15 years, whereas the respondent No. 1 applicant-union made entry in the company only in the year 1974 and that also in the Thana factory alone.

4. On the coming into force of the Act, respondent No. 1 applicant-union made an application under S. 11 of the Act for recognition. That application was resisted by the company and the other union, viz., the petitioner-union. A preliminary objection was taken to the maintainability of the application of respondent No. 1 by the other union. The other union contended that the application of the applicant-union is misconceived and liable to be dismissed. It was contended that the company has three establishments, viz., one being the factory at Thana, the other being the Bombay depot at Darukhana, Reay Road, Bombay, and the third being the head office Express Towers, Nariman Point, Bombay-21. All these three establishments, it was contended, constitute one concern within the meaning of the said term in sub-s. (3) of S. 3 of the Act. It was further contended that under sub-s. (15) of S. 3 of the Act, all the three aforesaid establishments would constitute an "undertaking" and one application for recognition will have to be filed in respect of these three establishments. It was, therefore, contended that as the applicant-union has filed the application only in respect of the Thana establishment without including the other two establishments, the application is not maintainable and is liable to be dismissed in limine. It may be mentioned that the company supported the stand taken by the other union, viz., the petitioner-union.

5. The preliminary objection raised by the petitioner-union was considered by the learned President of the Industrial Court and he having accepted the contentions of the other union, the petitioner-union has approached this Court under Arts, 226 and 227 of the Constitution of India, for a writ of certiorari or a writ in the nature of certiorari to quash and set aside the judgment and order of the President of the Industrial Court dated March 31, 1976.

6. Mr. Singhvi, the learned counsel for the petitioner-union, has assailed the order of the learned President overruling the preliminary objection to the maintainability of the application which was raised by the petitioner-union and he has once again repeated the very contentions which were made before the President of the Tribunal, in support of his preliminary objection. Those contentions, as we pointed out, are, that since all the three establishments of the company, viz., the factory at Thana, the depot at Darukhana, Reay Road, Bombay, and the head office at Express Towers, Nariman Point, Bombay, constitute one concern in terms of S. 3 of the Act and since under sub-s. (15) of S. 3 of the Act, the three aforesaid establishments would constitute an undertaking and the application for recognition to be maintainable under S. 11 of the Act has to be filed in respect of all the three establishments and since admittedly, the applicant-union, viz., respondent No. 1, has filed an application

only on behalf of the establishment of the factory workers at Thana without including the other two establishments, the application is not maintainable and is liable to be dismissed in limine. As against that Mr. Buch, the learned counsel for the applicant-union, viz., respondent No. 1, has submitted that since on any interpretation, one concern as defined in sub-s. (3) of S. 3 would be an undertaking under sub-3. (15) of S. 3, there is no substance in the preliminary objection raised by the petitioner-union and the learned President was, therefore, perfectly justified in repelling the preliminary objection. He further submits that since it is possible to construe the relevant provisions in the manner suggested by him and such construction would advance the remedy provided for the Act, that construction should be followed and the applicant-union, viz., respondent No. 1-union, could not be shut out at the threshold of its attempt, to get recognition, under S. 11 of the Act, provided it fulfils the other requirements for such recognition.

7. To appreciate the rival contentions, it would be necessary to refer to the preamble and certain relevant provisions of the Act. The preamble of the Act shows it is an Act to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings, to state their rights and obligations and to confer certain powers on unrecognised unions, etc. Chapter III of the Act deals with recognition of unions. Section 10(1) provides :

"Subject to the provisions of sub-ss. (2) and (3), the provisions of this Chapter shall apply to every undertaking, wherein fifty or more employees are employed, or were employed on any day of the preceding twelve months."

It is not necessary to refer to the proviso which enables the State Government to apply the provisions of this Chapter to any undertaking employing less than 50 persons. Section 11, which deals with application for recognition of union, reads thus :

"(1) Any union (hereinafter referred to as the "applicant") which has for the whole of the period of six calendar months immediately preceding the calendar month in which it so applies under this section a membership of not less than thirty per cent. of the total number of employees employed in any undertaking may apply in the prescribed form to the Industrial Court for being registered as a recognised union for such undertaking."

Section 12(1) provides for a notice of the said application being displayed and being given to the concerned parties after a scrutiny of the said application. Section 12(2) provides that if, after considering the said objections which may be received under sub-s. (1) from any other union or employers or employees, if any, and if after holding such enquiry in the matter, 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 the Act, the Industrial Court shall, subject to the provisions of the said section, grant recognition to the applicant union and issue a certificate of such

recognition. Sub-section (3) of S. 12 provides that "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 such undertaking, and if it satisfied the conditions requisite for recognition specified in S. 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." in other words, it would appear that when an application under S. 11 is made and is found to be in order, a notice shall be issued and further if the requirements of sub-s. (2) are fulfilled, the union would be recognised and the certificate would issue. It would further appear that if, on the other hand, counter claim is put forward by any other union and it is found that union has the largest number of the employees employed in the undertaking, and if that other union also fulfils the requirements which the applicant-union has to fulfil for being recognised, than the authority is empowered to grant recognition and issue a certificate not to the applicant-union but to the other union which has the largest number of employees employed in the undertaking. It may be mentioned that the other union, viz., the petitioner-union has purported to apply under sub-s, (3) of S. 12 of the Act and has raised the preliminary objection.

8. Sub-section (15) of S. 3 of the Act defines an undertaking as under :

""Undertaking" for the purposes of Chapter III, means any concern in industry to be one undertaking for the purpose of that Chapter :

Provided that, the State Government may notify a group of concerns owned by the same employer in any industry to be one undertaking for the purpose of that Chapter."

9. Now, what is a concern ? Concern is defined in sub-s. (3) of S. 3 of the Act as under :

""Concern" means any premises including the precincts thereof where any industry to which the Central Act applies is carried on".

10. It is on a true and correct interpretation of the expression "undertaking" in sub-s. (15) of S. 3 and the expression "concern" in sub-s. (3) of S. 3 of the Act, read with the preamble to the Act and the provisions of Ss. 10 and 11 of the Act in Chapter III under the heading "Recognition of Unions" that the controversy can be resolved. Now what is submitted by Mr. Singhvi is that since the expression "any concern" in sub-s. (15) of the Act would mean more than one concern or all concerns, the Legislature intended that when it comes to making an application for recognition, an undertaking must include all the concerns belonging to the same employer in any industry. In support of his submission that the expression "any" would mean more than one, Mr. Singhvi has drawn our attention to Stroud's Judicial Dictionary 4th edition, volume 1, page 145, wherein it is stated that the expression "any" may mean more than one, Mr. Singhvi also referred us to Words and Phrases Legally Defined Vol. I, page 94

wherein it is observed that "Any", is a word of very wide meaning, and prima facie the use of it excludes limitation". He also submitted that there could be no limitation on the word "any" and by way of illustration he submitted that when A says to B take any book, it would mean that A has permitted B to take all the books in his library. As against that, Mr. Buch has drawn our attention to the definition of "any" in Random House Dictionary (College Edition) 1972, page 61, where "any" has been given the meaning, one, a, an or some, one or more without specification or identification. He has also drawn our attention to the meaning of the word "any" given in the Little Oxford Dictionary, third edition, 1964, at pages 26, wherein the expression "any" has been given the meaning : one, some, every. There could be no dispute that according to the dictionary meaning, the expression "any" may mean one or more. It would thus follow that while interpreting the word "any" occurring in sub-s. (15) of S. 3 of the other provisions of the Act, one has necessarily to look to the context in which it is used and to find out whether it is used in the context - in the sense - of one or more. It is common knowledge that in the English language one word may have more than one meaning. The precise meaning which is to be attached has to be gathered from the context in which it is used, inasmuch as words get their meaning, colour and weight from the context in which they are used. Judged in that light, we are of the view, that the expressions "any" occurring in sub-s. (15) of S. 3 could be more appropriately used as indicating one concern, as against more than one. Concern as defined in sub-s. (3) of S. 3 undoubtedly means any premises including the precincts thereof where any industry to which the Central Act applies is carried on. The expression "any" in this context means only one premises and not more than one premises. What is more, concern here contemplated is any one concern in any industry. In sub-s. (15) of S. 3 where the meaning of the expression "undertaking" has been given, in our opinion, the expression "any" has been used to mean a single concern as distinguished from more than one concern in an industry. It would be one undertaking for the purpose of Chapter III, viz, for the purpose of recognition of unions, That more than one concern of the same employer in an industry were not within the contemplation of the Legislature, when using the expression "undertaking" in sub-s. (15) of S. 3 is made clear by the legislature by providing a proviso which specifically lays down that the State Government may notify a group of concerns owned by the same employer in any industry to be one undertaking for the purpose of that Chapter. To our mind it is, therefore, clear that as a normal rule, the Legislature thought and intended that collective bargaining could be better facilitated by providing for the recognition of an individual concern, construing it as one undertaking, for the purposes of enabling it to get recognition under Chapter III of the Act. The Legislature also took abundant care to see that in the event of the State Government coming to the conclusion that in certain circumstances, either depending upon the number of employees in a particular concern or for any other reasons, it is more conducive for carrying out the objects of the Act and facilitate collective bargaining for certain undertakings that more than one concern in an industry belonging to the same employer should be

deemed to be one undertaking for the purpose of being recognised as one undertaking under S. 11 in Chapter III of the Act, there ought to be a specific provision to enable the State Government to do so. It is precisely for that purpose that the proviso to sub-s. (15) of S. 3 provides, that the State Government may notify a group of concerns owned by the same employer in any industry to be one undertaking for the purposes of that Chapter. This proviso further confirms the view we are taking about the interpretation of the words "any concern" occurring in the main part of sub-s. (15) of S. 3, viz., that the word "any" was intended to cover only one concern and not more than one concern. The Legislature must have felt that in the absence of the proviso the main part of the definition in sub-s. (15) of S. 3 could not take in more than one concern in an undertaking belonging to the same employer. That accounts why the proviso was called for. As observed by Maxwell on the Interpretation of Statutes, 12th edition by Langan, at page 190 : "If a proviso cannot reasonably be construed otherwise than as contradicting the main enactment, then the proviso will prevail on the principle that it speaks the last intention of the makers," We are, therefore, of the view that as between the two dictionary meanings which the expression "any" bears, viz., one or more than one concern, that expression occurring in the main provisions of sub-s. (15) of S. 3, in the contest in which it is used, particularly read with the proviso and Ss. 10 and 11 and the preamble of the Act, must be construed as only one and not more than one. In fact, the interpretation put by Mr. Singhvi on the expression "any concern" occurring in the main sub-s. (15) of S. 3 would make the proviso redundant. That is one more reason why his interpretation cannot be accepted. If undoubtedly therefore the expression "any concern" occurring in sub-s. (15) of S. 3 would prima facie include one or more than one, and if on a correct and true interpretation of the expression in the context in which it is used, it purports to be used to mean only one concern and not more than one, and if in a given case it is considered desirable to treat more than one concern as an undertaking the State Government has to be moved under the proviso to sub-s. (15) of S. 3 it must follow that there is no force in the preliminary objection to the maintainability of the application. Therefore, the application of the applicant-union, viz., the respondent No. 1 could not be said to be incompetent or liable to be dismissed in limine. That application has to be considered on merits and a final decision taken in the light of the provisions of S. 12 of the Act. In the result, we see no reason to interfere with the order which is complained of and the petition is, therefore, dismissed and the true is discharged. No order as to costs.