
(1996) 02 BOM CK 0056
In the Bombay High Court
Case No : Writ Petition No. 600 of 1989

Premier Automobile Employees Union	APPELLANT
Vs	
K.M. Desai and ors	RESPONDENT

Date of Decision : 07-02-1996

Acts Referred:

Trade Unions Act, 1926 — Section 11, 13, 8

Citation : (1996) 5 BomCR 4 : (1996) 73 FLR 1614 : (1998) 3 LLJ 1024

Hon'ble Judges : G.R. Majithia, J; Devkant Trivedi, J

Bench : Division Bench

Judgement

Majithia J.

1. Premier Automobile Employees" Union has challenged the order of the Industrial Court, Maharashtra Bombay, in Application (MRTU) No. 11 of 1983 dated January 5, 1989 cancelling its registration as a recognised Trade Union of the Premier Automobiles Ltd., in this writ petition under Article 226 of the Constitution of India.

2. Premier Automobile Employees" Union (hereinafter "the Union") was recognised as a registered Trade Union in Premier Automobiles Ltd. by the Industrial Court vide its order dated July 9, 1978. Association of Engineering Workers (hereinafter "the Association") filed an application dated June 16, 1983 u/s 13 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the Act") for cancellation of recognition of the Union. The cancellation was sought on the ground that the membership of the Union had, for a continuous period of six calendar months, fallen below the minimum required u/s 11 of the Act, viz. the membership had fallen below 30% of the total number of employees employed in the undertaking of Premier Automobiles Ltd. The application was contested by the Union. It, inter alia, pleaded that its membership was not below the prescribed limit.

3. The Industrial Court, finding that the principal dispute was between the rival

Unions, directed the Investigating Officer of the Industrial Court, Bombay, to verify the membership and other relevant records of both the unions and to submit a report. The Investigating Officer inspected the records of both the Unions and submitted his report dated November 30, 1987 to the Industrial Court. He reported that the membership of the Union had fallen below the minimum required under Sections 11 and 13 of the Act. The Union made a prayer for summoning the Investigating Officer for cross-examination. The prayer was rejected vide order dated July 4, 1988. This order was challenged in this Court in writ petition No. 2485 of 1988. The writ petition was disposed of by observing thus :-

"The parties will submit in writing the queries they desire to put to the Investigating Officer. The First respondent shall scrutinise the proposed queries and the ones approved by him after hearing the parties shall be answered by the Investigating Officer.

The Union submitted 17 queries for answer by the Investigating Officer. The Industrial Court directed the Investigating Officer to give reply to only query Nos. 5, 6, 7, 8, 9, 12, 15, 16 and 17. Replies to the queries were duly given by the Investigating Officer. The Industrial Court permitted the parties to file objections to the report and, after considering the same, rejected the objections and upheld the report.

4. The Investigating Officer, after examining the records of the employer and other evidence furnished by the Union and by the Association, came to the conclusion that the Union has a valid membership of 11.7% of the total number of employees employed in the company during the relevant period whereas the Association had a valid membership of 38.3% of the total number of employees of the company. The membership of the Union fell short of 30% as envisaged by Section 11 of the Act. The Investigating Officer also took note of the fact that the Union was required to produce the relevant record of membership of six months preceding the presentation of the application u/s 13 of the Act. The application was presented on June 16, 1983. The rival Unions were, therefore, required to produce the record of their memberships from December 1, 1982 to May 31, 1983. The Union did not produce the record of memberships for the month of December 1982. Relying upon the report of the investigating Officer, the Industrial Court cancelled the registration granted to the Union vide order dated July 9, 1978 and restrained it from entering into agreements or settlements with the company.

5. The Union, aggrieved against the order of the Industrial Court, has come to this Court.

6. Learned counsel for the petitioner tried to impress upon us that the total number of membership of the Union was not less than the prescribed limit. She also tried to highlight that the report of the Investigating Officer should have been rejected in view of the infirmities pointed out therein. In support of her

submission, she relied upon a decision of this Court in *Teddington Chemical Kamgar Sangh v. M.G.K. Union* 1990 II LLj 466.

7. The company in its affidavit-in-reply took a positive stand that the Investigating Officer by his letter dated January 22, 1986 directed it to file list of the employees on its roll during the relevant period from December 1, 1982 to May 31, 1983. Pursuant to this direction, the company filed the statement giving the following information, namely that it had 5099 Daily Rated Workmen and 1814 Monthly Rated Workmen. The company filed another list of separated employees as on February 1, 1986. In the said list, the total number of separated employees mentioned was 691. However, the Investigating Officer opined that only 222 employees out of this list had left the service of the company. The company took a positive stand that the total number of membership of the Union was less than 30% which was below the requisite membership for recognition.

7. The Association, alone with its written statement and reply, filed a statement showing the monthly break of membership up of the Union which is as under :-

It further stated that from this statement it is clear that the Union in every preceding month of the application u/s 13 of the Act had less than 30% membership.

8. The statements made by the Association and by the company in their respective affidavits with regard to the membership of the Union is every preceding six months, namely in December 1982, January 1983, February 1983, March 1983, April 1983 and May 1983, of the filing of the application u/s 13 of the Act were not controverted by filing a rejoinder. No material has been placed before us to suggest that the finding arrived at by the Industrial Court is either perverse or not based on any evidence. The finding recorded by the Industrial Court that the membership of the Union during the relevant period had fallen below the prescribed limit is essentially a finding of fact based upon evidence and is not open to challenge in writ jurisdiction. Even otherwise we find that the finding of fact is perfectly correct on the data available on record.

9. In the judgment rendered in *Teddington Chemical Kamgar Sangh's* case (supra), a dispute was raised in this Court with regard to the field of jurisdiction and authority of the Investigating Officer appointed u/s 8 of the Act. The dispute arose in the following circumstances, namely, two rival unions moved the Industrial Court for recognition; the Industrial Court referred the matter to the Investigation Officer to verify the membership of the union; the Investigating Officer submitted the report; objection filed to the report were rejected and the report was accepted. The order of the Industrial Court was challenged in this Court. In this Court it was urged that the formidable objection raised against the report were not dealt with by the Industrial Court. This will be apparent from the following observations made in para 13 of the Report :-

"All said and done without under mining the impact of the submission of Sri Deshmukh, the learned counsel, on the general principles and the field of

authority and jurisdiction available to the investigating Officer in the context of the observations already made, still this appears to be pre-eminently a fit case where the Industrial Court would been better advised to examine at least some of the formidable contentions that were lodged before it on behalf of the petitioner-union in respect of which the picture was not quite clear through the report of the Investigating Officer. It is in that context that the concept of rendering assistance by the Investigating Officers plays an important part. Under the circumstances the impugned order being not only vulnerable but unsustainable will have to be set aside. It would be necessary for the Industrial Court to rehear the matter in the context of rival parties that would be canvassed before it in the context of the report of the Investigating Officer and also in the context of submission of relevant provisions of the Act and regulations.

This Court after so holding, remitted the case to the Industrial Court for rehearing. This judgment has no relevance to the facts of the instant case.

10. For the reasons stated above, the writ petition fails and is dismissed. Rule is discharged. No order as to costs.