

(2024) 03 BOM CK 0074
In the Bombay High Court
Case No : Writ Petition No. 895 Of 2019

Pune Mahanagar Parivahan

APPELLANT

Vs

Mahamandal Ltd. And Ors

RESPONDENT

Date of Decision : 22-03-2024

Acts Referred:

Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices Act, 1971 — Section 2(15), 3(3), 3(15), 11, 12, 12(4), 13, 14, 14(1), 19, 20, 20(1), 23, 29(c)

Citation : (2024) 03 BOM CK 0074

Hon'ble Judges : Sandeep V. Marne J

Bench : Single Bench

Advocate : Sanjay Singhvi, Jane Cox, Rahil Fazelbhoy, Karishma Rao, Rohit Sakhadeo, Nitin Arvind Kulkarni, Jignasha Pandya

Final Decision : Allowed

Judgement

Sandeep V. Marne, J

1) Petitioner - Union has filed this Petition challenging the Judgment and Order dated 17 September 2018 passed by Industrial Court, Pune rejecting Application (MRTU) No. 1 of 2013 filed by Petitioner-Union for its recognition. The Application filed by Petitioner-Union seeking recognition under Section 11 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971 (MRTU and PULP Act) has been rejected as not maintainable by the Industrial Court, by upholding the objection raised by Respondent No. 2-Union.

2) The issue involved in the Petition is in a narrow campus and therefore detailed narration of facts is not warranted. Suffice it to record that Pune Municipal Corporation (PMC) and Pimpri Chinchwad Municipal Corporation (PCMC) are established under the provisions of Maharashtra Municipal Corporations Act 1949. Both the Municipal Corporations established their own Transport Undertakings. It appears that Respondent No.2 - PMT Kamgar Sangh (INTUC) was recognised trade union in respect of Pune Municipal Transport Undertaking (PMT). It appears

that in respect of Pimpri Chinchwad Municipal Transport Undertaking (PCMT), there was no recognised union.

3) The Government of Maharashtra took a decision to merge PMT and PCMT and to form a company to carry out transport activities in and around the jurisdictions of the said Municipal Corporations. Accordingly, Government Resolution dated 19 April 2007 was issued granting approval for merger of PMT and PCMT and incorporation of Pune Mahanagar Parivahan Mahamandal Limited (PMPML). Accordingly, PMPML was constituted by registering it as a company with the Registrar of Companies, Pune. The initial share capital of PMPML was Rs.5,00,000/- divided into Rs.50,000/- shares having face value of Rs.10 each. PMC held 29,996 shares, PCMC was allotted 19,999 shares and the balance shares were allotted to officials of both the Municipal Corporations in their official capacities. This is how the entire transport business of both the Municipal Corporations was merged and handed over to PMPML.

4) Petitioner-Union was formed and registered under the Trade Unions Act 1926 and registration certificate dated 2 April 2008 was issued. It filed Application under Section 11 of MRTU and PULP Act before Industrial Court, Pune, which was registered as Application (MRTU) No. 1 of 2013. Petitioner-Union's claimed in its Application that it had 4710 members consistently from July 2012 to December 2012, which formed 55% of total number of employees in PMPML. Petitioner-Union therefore prayed for grant of recognition under Section 11 of MRTU and PULP Act. PMPML filed written statement confirming that PMT had ceased to exist and accordingly Respondent No.2 was no longer a recognised union in PMPML. It appears that Respondent No.2-Union intervened in the Application filed by Petitioner-Union and filed Application dated 2 December 2014 for deciding preliminary issue of maintainability of Petitioner's Application. The Industrial Court, by Judgment and Order dated 17 September 2018, has held that the Application filed by Petitioner-Union for its recognition under Section 11 and MRTU and PULP Act was not maintainable and proceeded to dismiss the same. Aggrieved by the Judgment and Order dated 17 September 2018, Petitioner-Union has filed the present Petition. By Order dated 25 February 2020, this Court admitted the Petition.

5) Mr. Singhvi, the learned Senior Advocate appearing for Petitioner-Union would submit that the Industrial Court has erred in holding Petitioner's Application as not maintainable by erroneously interpreting the provisions of Section 11, 13 and 14 of the MRTU and PULP Act. He would submit that under Section 11 of the MRTU & PULP Act, Petitioner-Union is entitled to seek recognition as there is no recognised union in respect of the 'Undertaking' as of now. That recognition of Respondent No.2-Union in respect of PMT is irrelevant as the said undertaking no longer continues to exist. That PMPML is a distinct undertaking as the same is formed after dissolution of and merger of PMT and PCMT. That the Labour Court erroneously held that Respondent No.2-Union is still a recognised union with a further finding that it was necessary for the Petitioner to first seek derecognition

of Respondent No.2-Union under Section 13 of the MRTU and PULP Act. That since Respondent No.2 is not a recognized Union itself, there is no question of filing any proceeding under Section 13 to seek cancellation of recognition.

6) Mr. Singhvi would submit that the Industrial Court erroneously relied upon judgment of this Court in N.R.C. Employees' Union and Ors. Vs. The Government of Maharashtra 2012 (I) CLR 196 which has no application to the facts and circumstances of the present case. That the Industrial Court has rejected the application of Petitioner-Union without applying its mind to the aspect of cessation of existence of PMT and consequent lapsing of recognition in favour of Respondent No.2-Union.

7) Per contra Mr. Kulkarni the learned counsel appearing for Respondent No.2-Union would oppose the Petition and support the Order passed by Industrial Court. Mr. Kulkarni would submit that under Section 11 of MRTU and PULP Act, recognition is to be granted in respect of in any 'undertaking', which word is defined under Section 2 (15) of the Act to mean any 'concern' in an industry. That thus every 'concern' in an industry becomes an 'undertaking'. He would submit that the transport Industry continues to exist, notwithstanding change in the management. That therefore the 'undertaking' continued to subsist within the meaning of Section 11 of the Act.

8) Mr. Kulkarni would rely upon Interim Order dated 17 May 2007 in which PMT had express willingness to hold talks with Respondent No.2-Union in respect of its employees even in future. That therefore PMPML is now estopped from questioning recognition of Respondent No.2-Union. Mr. Kulkarni would submit that the registered office of PMPML is located at PMT building, Swargate, Pune, at which address, Respondent No.2-Union has received its recognition. That even after merger of PMT and PCMT, the registered address of PMPML continues at PMT building, Swargate, Pune. That thus nothing has changed and therefore there is no reason to question continuation of recognition of Respondent No.2-Union, which has received its recognition at the same address. He would submit that mere change of management does not entail automatic revocation of recognition of Respondent No.2-Union.

9) Mr. Kulkarni would further submit that the proper procedure to be adopted by the Petitioner-Union was to file an application under Section 13 of MRTU and PULP Act if it believes that the membership of Respondent No.2-Union has fallen below the minimum members required under Section 11 for recognition. Alternatively, Petitioner-Union can file application under Section 14 of the Act by demonstrating that it has largest membership of employees employed in the Undertaking. Mr. Kulkarni would rely upon provisions of Section 29(c) of MRTU and PULP Act, in support of his contention that PMT would also include its successor in respect of the undertaking and accordingly the Union recognised in respect of predecessor of PMPML stands automatically recognised in respect of PMPML as well. He would submit that PMT was not dissolved and was merely merged with PCMT. Mr. Kulkarni would further submit that PMPML has already

lost in Writ Petition No. 7892 of 2019 filed by it questioning the right of Respondent No.2-Union in respect of deduction of subscription from its employees. That the Order passed by this Court on 14 August 2019 proceeds on a footing that Respondent No.2 is a recognised union.

10) Mr. Kulkarni would rely upon judgment of this Court in Hind Kamgar Sanghatana Vs. Dai-Ichi Karkaria Ltd.². In support of his contention that MRTU and PULP Act does not recognise the concept of cancellation of recognition granted under the Trade Unions Act. He would also rely upon the judgment of the Apex Court in Principal Commissioner of Income Tax (Central) - Writ Petition No. 5917 of 2012 deciding on 18 April 2019 Vs. M/s. Mahagun Realtors (P) Ltd. AIR 2022 SC 1672 in support of his contention that even after merger, the undertaking is treated as a continuing one. Mr. Kulkarni would pray for dismissal of the Petition.

11) Mr. Sakhadeo, the learned counsel appearing for Respondent No.1 PMPML would submit that PMPML had filed written statement in application (MRTU) No. 1 of 2013 taking a stand that PMT and PCMT have merged into newly registered public company under the Companies Act by name Pune Mahanagar Parivahan Mahamandal Ltd. According to the Mr. Sakhadeo, PMT is no more in existence and that therefore recognition granted to Respondent No.2-Union also consequently ceases to exist. Mr. Sakhadeo would further submit that Order dated 14 August 2019 passed by this Court has been challenged by PMPML before the Apex Court and that the Special Leave Petition is pending.

12) Ms. Pandya the learned counsel appearing for Respondent No. 3- Union would support the Petition submitting that the recognition of Respondent No.2-Union has ceased to exist consequent to merger of PMT and PCMT.

13) Rival contentions of the parties now fall for my consideration.

14) The short issue that arises for consideration is whether recognition granted to Respondent No.2-Union in respect of the Undertaking of PMT would continue to subsist even after merger of PMT with PCMT and formation of resultant company of PMPML. Before going into the factual aspect, it would be necessary to take an overview of the statutory framework. Section 3(15) of MRTU and PULP Act defines the term undertaking as under:

3(15). " 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;

15) Since definition of the term 'undertaking' refers to the word 'concern' it would be necessary to refer to the definition of that term. The word 'concern' has been defined under Section 3 (3) as under:

"3 (3). "concern" means any premises including the precincts thereof where any industry to which the Central Act applies is carried on;"

16) Chapter IV of the MRTU and PULP Act deals with obligations and rights of recognised unions, other unions and certain employees. Under Section 20 of the Act, a recognised union is entitled inter alia to hold discussions with the undertaking in respect of conditions of service of the employees. Therefore, recognition is an important facet in respect of various unions formed by the employees of an undertaking. Only a recognised union can hold discussions with the management for determining conditions of service and to enter into settlements. Sections 11 and 12 of the MRTU & PULP Act provides for recognition of unions and read thus:

"11. Application for Recognition of Union - (1) Any union (hereinafter) referred to as the "applicant-union") 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.

(2) Every such application shall be disposed of by the Industrial Court as far as possible within three months from the date of receipt of the application, where a group of concerns in any industry which is notified to be one undertaking for which recognition is applied for is situated in the same local area; and in any other case, within four months.

12. Recognition of Union. – (1) On receipt of an application from a union for recognition under section 11 and on payment of the prescribed fees, not exceeding rupees five the Industrial Court shall, if it finds the application on a preliminary scrutiny to be in order, cause notice to be displayed on the notice board of the undertaking, declaring its intention to consider the said application on the date specified in the notice, and calling upon the other union or unions, if any, having membership of employees in that undertaking and the employers and employees affected by the proposal to show cause, within a prescribed time, as to why recognition should not be granted to the applicant-union.

(2) If, after considering the objections, if any, that may be received under subsection (1) from any other union (hereinafter referred to as "other union") or employers or employees, if any, and if after holding such enquiry in the matter as it deems fit, the Industrial Court comes to the conclusion that the conditions requisite for registration specified in section 11 are satisfied, and the applicant-union also complies with the conditions specified in section 19 of this Act, the Industrial Court shall, subject to the provisions of this section, grant recognition to the applicant-union under this Act, and issue a certificate of such recognition in such form as may be prescribed.

(3) 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 satisfies the conditions requisite for recognition specified in section 11, and also complies with the conditions specified in section 19 of this Act, the Industrial Court shall, subject to the provisions of this section, grant such recognition to the other union, and issue a certificate of such recognition in such form as may be prescribed.

Explanation : For the purpose of this sub-section, the other union shall be deemed to have applied for recognition in the same calendar month as the applicant-union.

(4) There shall not, at any time, be more than one recognised union in respect of the same undertaking.

(5) The Industrial Court shall not recognise any union, if it is satisfied that the application for its recognition is not made bona fide in the interest of the employees, but is made in the interest of the employer, to the prejudice of the interest of the employees.

(6) The Industrial Court shall not recognise any union, if, at any time, within six months immediately preceding the date of the application for recognition, the union has instigated, aided or assisted the commencement or continuation of a strike which is deemed to be illegal under this Act."

17) Thus, under Section 11, any union, which has not less than 30% of membership of the total number of employees employed in any undertaking for a period of six calendar months immediately preceding the month of making application, can apply in prescribed form to the Industrial Court for registration as recognised union. Section 12 lays down the procedure to be followed by the Industrial Court for registration of a union as a recognised union. Sub Section 4 of Section 12 provides that there shall not be more than one recognised union in respect of the same undertaking.

18) Section 13 of the MRTU & PULP Act deals cancellation of recognition of union and suspension of its rights. The Industrial Court can cancel recognition of union, if its membership falls below 30% of the total employees employed in the undertaking. Section 13 reads thus:

13. Cancellation of recognition and suspension of rights.

(1) 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,—

(i) that it was recognised under mistake, misrepresentation or fraud ; or

(ii) that the membership of the union has, for a continuous period of six calendar months, fallen below the minimum required under section 11 for its recognition :

Provided that, where a strike (not being an illegal strike under the Central Act)

has extended to a period exceeding fourteen days in any calendar month, such month shall be excluded in computing the said period of six months :

Provided further that, the recognition of a union shall not be cancelled under the provisions of this sub-clause, unless its membership for the calendar month in which show cause notice under this section was issued was less than such minimum ; or

(iii) that the recognised union has, after its recognition, failed to observe any of the conditions specified in section 19 ; or

(iv) that the recognised union is not being conducted bona fide in the interests of employees, but in the interests of employer to the prejudice of the interest of employees ; or

(v) that, it has instigated, aided or assisted the commencement or continuation of a strike which is deemed to be illegal under this Act ; or

(vi) that its registration under the Trade Unions Act, 1926, is cancelled ; or

(vii) that another union has been recognised in place of a union recognised under this Chapter.

(2) The Industrial Court may 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 it has committed any practice which is, or has been declared as, an unfair labour practice under this Act :

Provided that, if having regard to the circumstances in which such practice has been committed, the Industrial Court is of opinion, that instead of cancellation of the recognition of the union, it may suspend all or any of its rights under sub-section (1) of section 20 or under section 23, the Industrial Court may pass an order accordingly, and specify the period for which such suspension may remain in force.

19) Section 14 confers a right on other unions (non-recognised union) to make an application to the Industrial Court for being registered as recognised union in place of a recognised union already registered under Section 11, on the ground that it has the largest membership of employees. The application under Section 14(1) can be made only after expiry of period of two years from the date of registration of recognised union. Section 14 reads thus:

14. Recognition of other union.

(1) If any union makes an application to the Industrial Court for being registered as a recognised union in place of a recognised union already registered as such (hereinafter in this section referred to as the " recognised union ") for an undertaking, on the ground that it has the largest membership of employees employed in such undertaking, the Industrial Court shall, if a period of two years has elapsed since the date of registration of the recognised union, call upon the

recognised union by a notice in writing to show cause, within thirty days of the receipt of such notice, as to why the union now applying should not be recognised in its place. An application made under this sub-section shall be accompanied by such fee not exceeding rupees five as may be prescribed :

Provided that, the Industrial Court may not entertain any application for registration of a union, unless a period of one year has elapsed since the date of disposal of the previous application of that union.

(2) If, on the expiry of the period of notice under sub-section (1), the Industrial Court finds, on preliminary scrutiny, that the application made is in order, it shall cause notice to be displayed on the notice board of the undertaking, declaring its intention to consider the said application on the date specified in the notice, and calling upon other union or unions, if any, having membership of employees in that undertaking, employer and employees affected by the proposal to show cause within a prescribed time as to why recognition should not be granted.

(3) If, after considering the objections, if any, that may be received under sub-section

(2) and if, after holding such enquiry as it deems fit (which may include recording of evidence of witnesses and hearing of parties), the Industrial Court comes to the conclusion that the union applying complies with the conditions necessary for recognition specified in section 11 and that its membership was, during the whole of the period of six calendar months immediately preceding the calendar month in which it made the application under this section, larger than the membership of the recognised union, then the Industrial Court shall, subject to the provisions of section 12 and this section, recognise the union applying in place of the recognised union, and issue a certificate of recognition in such form as may be prescribed.

(4) 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 such other union has notified to the Industrial Court its claim to be registered as a recognised union for such undertaking, and if, such other union satisfies the conditions requisite for recognition under section 11 and complies with the conditions specified in section 19 of this Act, the Industrial Court shall grant such recognition to such other union, and issue a certificate of such recognition in such form as may be prescribed.

Explanation.—For the purpose of this sub-section, the other union shall be deemed to have applied for recognition in the same calendar month as the applicant union.

(5) Every application under this section shall be disposed of by the Industrial Court as far as possible, within three months from the date of receipt of the application, where a group of concerns in any industry which is notified to be one undertaking for which recognition is applied for is situated in the same local

area; and in any other case, within four months.

Explanation.—“ local area ” for the purposes of this sub-section means the area which the State Government may, by notification in the Official Gazette, specify in such notification.

20) After having taken the stock of the statutory framework of MRTU and PULP Act, it would be necessary to examine the correctness of Order passed by the Industrial Court holding as not maintainable Petitioner-Union's application for registration as recognised union. The entire issue revolves around interpretation of the term 'undertaking'. As observed above, under sub-section 4 of Section 12, there cannot be more than one recognised union, at any time, in respect of the same undertaking. Respondent No. 2 claims that its recognition in respect of PMT continues to subsist even after formation of PMPML. According to the Respondent No.2, the undertaking continues to remain the same and merely the management has changed. To examine this issue, it would be necessary to examine the manner of formation of PMPML.

21) As observed above, PMT and PCMT were the transport undertaking of Pune Municipal Corporation and Pimpri Chinchwad Municipal Corporation respectively. The PMT and PCMT were established by the two Municipal Corporations as per the provisions of the Maharashtra Municipal Corporations Act 1949. They were thus part and parcel of the respective establishments of Municipal Corporations. It was felt that there should a common entity operating the municipal bus service in twin cities Pune and Pimpri-Chinchwad. The Government of Maharashtra, by GR dated 19 April 2007, granted approval for merger of PMT and PCMT and for formation of PMPML as a company under the provisions of Companies Act 1956. Accordingly, PMPML came to be incorporated under certificate of incorporation issued by Registrar of companies Pune on 19 July 2007. Thus, PMPML is body corporate having share capital of Rs.50,00,000/-. PMPML has placed on record the Memorandum of Association and Articles of Association as well as shareholding of PMPML. This shows that PMPML is a separate entity than PMC and PCMC. The PMPML is not a part of either of the Municipal Corporations. After merger of PMT and PCMT and on incorporation of PMPML, both PMT and PCMT have ceased to exist. This position is confirmed PMPML by filing written statement before the Industrial Court, which stand is continued by PMPML in the present Petition as well.

22) Under Section 11 of MRTU and PULP Act, application for registration of recognised union is to be made in respect of an 'undertaking' which means under Section 3(15), a 'concern' in any industry. The word 'concern' means any premises including the precincts thereof, where the industry is carried on. Thus, under MRTU and PULP Act, every concern in an industry is treated as a separate undertaking. The word 'concern' refers to physical premises where an industry is carried on. Thus, the Act recognises the concept of multiple 'undertakings' in respect of same 'industry'. This would mean that in respect of particular industry owned by a company, the activities can be carried out at multiple premises and

each of those premises become separate undertaking under MRTU and PULP Act. Thus, in respect of every 'undertaking' of same company, there can be as many recognised unions corresponding to the number of undertakings of such company. To illustrate, there can be two separate recognised unions in respect of headquarters office of a company and its factory located at a different place.

23) However, in the present case, the entities which were carrying on the transport industry viz PMT and PCMT have ceased to exist. A new entity is born in the form of a registered company under Companies Act 1956 by name PMPML. Thus, this is not a case of merger of two undertakings into one like shifting of headquarters office of a company to its factory resulting in merger of two undertakings owned by same company. This is a case where the entity which owns the industry has ceased to exist and a new entity is formed.

24) In my view therefore, it cannot be stated that the undertaking in respect of which Respondent No.2 union was registered as a recognised union, has continued even after formation of PMPML. The very undertaking of PMT, in respect of which Respondent No. 2-Union was registered as recognised union, has ceased to exist. A new entity is born, which took over operations of transport activities of the two Municipal Corporations and with formation of PMPML and transfer of transport business to it, recognition of Respondent No.2-Union automatically came to an end.

25) The Industrial Court has erred in relying on judgment of this Court in N.R.C Employees' Union (supra), wherein the case involved the issue of merger of two undertakings owned by same company. The Company therein was running three plants with a composite factory licence for manufacture of nylon, rayon and chemicals in its factory at Mohane in Thane District. NRC Mazdoor Sangh was granted recognition in respect of the factory at Mohane. At company's head office in Mumbai, a separate staff union was formed, which was granted recognition under MRTU and PULP Act. The Company latter shifted its office from Mumbai to its factory premises in Mohane during 1995 and 1996. The staff union, which was representing the staff employed at office of the company in Mumbai, got aggrieved by settlements entered into by the company with Mazdoor Sangh, which was recognised union in respect of employees in the factory. In the light of this factual position, one of the issues before the Court was whether staff union automatically lost its status as recognised union upon shifting of the office and staff to factory premises. The Apex Court held in para 20 as under:

"20. The submission of the learned Counsel for the respondents that the staff union has lost its status as a recognised union for the staff when the staff was shifted to the factory premises is fallacious. The Mazdoor Sangh applied for registration as a recognised union of the workmen in the factory in place of the MGKU in 1995 on the basis of their membership in the factory between October 1994 and March 1995. It did not simultaneously make any application for clubbing the concern at the factory with the concern at the office premises into one undertaking as is permissible in law. It chose to restrict its application made

under s.14 of the MRTU and PULP act to the workmen in the factory. S.11 of the MRTU Act provides that an application may be filed by a union before the Industrial court for registering it as the recognised union for an undertaking. The word "undertaking" has been defined in the Act to mean any concern of the industry. "Concern" as defined in the Act means any premises including the precincts thereof where an industry is run. However while interpreting these words one cannot restrict the meaning only to the physical space of the building or premises in which the industry is run. It would have to mean and include the workmen employed in the particular premises or concern of the industry. Recognition of a union would have to be qua the workmen working in the concern. Recognition of a union cannot be only in respect of a physical space. For example, if a union is granted recognition in respect of a concern, meaning the physical space alone and the employer shifts the workplace of these workmen to another building it would be absurd to expect the union to apply for recognition once again. That could never have been the legislative intent. In a given case if an employer terminates the services of the employees in one unit where union A was the recognised union and shifts the workmen who were members of Union B (also recognised) to these premises from their original place of work, it can hardly be said that Union B would have to seek recognition again. Similarly when the members of a recognised union are shifted to a unit where there is already a recognised union of the workers in that unit in existence, the former cannot automatically lose its recognition. In fact the Act does not contemplate an automatic loss of recognition for any reason. It is only on an application being made to the Industrial Court that the recognition of a union can be cancelled. Even the cancellation can be effected only for the specific grounds mentioned in s.13. Shifting of the location of the work place of the members of the recognised union is not one such ground. Neither is there any concept of merger as the counsel for the respondents would have us believe. The recognition of one union cannot merge into the recognition of another. The members of one would have to resign and join the union which is in existence at the new workplace. Admittedly in the present case the members of the staff union have not forsaken it and joined the Mazdoor Sangh. Therefore the staff union would still continue as the recognised union for its members although the staff is now located in another unit. Moreover the recognition accorded to MGKU was only in respect of the workers employed in the factory and not for the staff. Mazdoor Sangh has been recognised in place of the MGKU as it filed an application under s.14 in 1994. The application was allowed in 2001 after verification of the membership for the six months between October 1994 and March 1995. The staff was shifted only in 1995-96 and therefore could never have been considered while ascertaining the membership. The submission of the learned counsel for the respondents is therefore untenable and without merit."

26) The Industrial Court has erred in relying on the judgment in N.R.C. Employees' Union (supra) without appreciating the factual position in which the observations are made in para 20 of the judgment. This is not a case where the

physical premises of two undertakings belonging to same company are brought together as was the case in N.R.C. Employees' Union. In the present case the very entity, which was carrying on industry at the undertaking viz PMT has ceased to exist and a new entity is formed by incorporation of PMPML.

27) Mr. Kulkarni has relied upon Order dated 14 August 2019 passed by this Court in Pune Mahanagar Parivahan Mahamandal Ltd Vs. PMT Kamgar Sangh (INTUC) Pune Writ Petition No. 7892 of 2019. In my view the issue before this Court in Writ Petition No. 7892 of 2019 was entirely different. The issue was about right of Respondent No. 2 Union to seek deduction of subscription. This Court was not concerned with the issue of validity of or subsistence of recognition of Respondent No.2-Union. Therefore, the Order of this Court cannot be read to mean that this Court upheld recognition of Respondent No.2-Union.

28) Mr. Kulkarni's reliance on judgment of this Court in Hind Kamgar Sanghatana (supra), in my view, is misplaced as the judgment would have no application to the facts and circumstances of the present case. The issue before this Court was whether deregistration Under Trade Unions Act ipso facto results in cancellation of recognition under MRTU and PULP Act. The issue in the present case entirely different viz about non-existence of the entity in respect of which Respondent No.2 was registered as recognised union.

29) Reliance by Mr. Kulkarni of judgment of the Apex Court in Principal Commissioner of Income Tax (Central -2) (supra) does not cut any ice. The issue before the Apex Court was about subsistence of liabilities after merger or amalgamation of two companies. In my view, the concept of continuance of liability under Income Tax Act after amalgamation/merger of two companies has no relevance to the issue in hand. As observed above, recognition of a union is qua an undertaking and once the undertaking ceases to exist, the recognition would automatically come to an end.

30) Reliance of Mr. Kulkarni on provisions of Section 29 (c) of the MRTU and PULP Act is again misplaced. Section 29 reads thus:

"29. Parties on whom order of Court shall be binding - An Order of the Court shall be binding on -

(a) all parties to the complaint.

(b) all parties who were summoned to appear as parties to the complaint, whether they appear or not, unless the Court is of opinion that they were improperly made parties.

(c) in the case of an employer who is a party to the complaint before such Court in respect of the undertaking to which the complaint relates; and

(d) where the party referred to in clause (a) or clause (b) is composed of employees, all persons who, on the date of the complaint, are employed in the undertaking to which the complaint relates and all persons who may be

subsequently employed in the undertaking."

31) Section 29 deals with parties on whom Order passed by Court would be binding. The said provision does not deal with the issue of continuation of recognition of a Trade Union from former undertaking to successor undertaking.

32) After considering the overall conspectus of the case, I am of the view that the Industrial Court has not properly appreciated the issue raised before it. Thus, the Order passed by Industrial Court suffers from palpable error. The reasonings recorded by the Industrial Court are unsustainable. I therefore find the judgment and Order of the Industrial Court to be indefensible. The Writ Petition accordingly succeeds and I proceed to pass the following Order:

ORDER

i. The Judgment and Order dated 17 September 2018 passed by Industrial Court Pune in Application (MRTU) No. 1 of 2013 is set aside.

ii. Application (MRTU) No. 1 of 2013 is restored on the file of Industrial Court Pune to be decided on merits.

iii. The Industrial Court shall proceed to decide Application (MRTU) No. 1 of 2013 on its own merits, without being influenced by any of the observations made in the present judgment.

33) With the above direction the Writ Petition is allowed. Rule is made absolute. There shall be no order as to costs.