

(2006) 10 BOM CK 0048
In the Bombay High Court
Case No : Writ Petition No. 5858 of 2006

Shramik Sena

APPELLANT

Vs

Reliance Industries Ltd. and Raigad Shramik Aekata Sangh

RESPONDENT

Date of Decision : 11-10-2006

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 11, 12, 14, 14(1), 14(2)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Rules, 1975 — Rule 8
Trade Unions Act, 1926 — Section 28(3), 28(4)

Citation : (2007) 1 ALLMR 29 : (2006) 6 BomCR 502 : (2007) 1 MhLj 588

Hon'ble Judges : V.M. Kanade, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Advocate : Sarvasri J.P. Cama and A.K. Jalisatgi, for the Appellant; C.U. Singh and M. D'Souza, instructed by Junnerkar and Associates for Respondent No. 1 and Sarvasri Sudhir Talsania and V.P. Vaidya, for the Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—Heard. Rule. By consent, rule made returnable forthwith.

2. By the present petition, the petitioner is challenging the order dated 23-8-2006 passed by the Industrial Court, Thane in Application (MRTU) No. 11 of 2004. By the impugned order, the Industrial Court has allowed the application filed by the respondent No. 2 u/s 14 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971, hereinafter called as "the said Act", for being registered as the recognised Union in place of the petitioner-Union.

3. The challenge to the impugned order is firstly on the ground that the impugned order is a non-speaking order in the sense that it does not disclose any reasons for the conclusions arrived at, secondly, that the conclusions are

contrary to the materials which were placed before the Industrial Court and, thirdly, the application filed by the respondent No. 2 was not in compliance with the requirements of law in as much as that it was not accompanied by the relevant documents which were otherwise required to be placed along with the application in terms of the Form-C.

4. Shri J.P. Cama, learned Senior Counsel appearing for the petitioner, submitted that bare perusal of the impugned order would disclose that the Industrial Court apart from merely drawing conclusions after reproduction of some of the materials on record has not at all analysed the same nor has disclosed any reasonings to substantiate the conclusions which have been arrived at. On this count itself, according to the learned Counsel, the impugned order needs to be quashed and the matter remanded to the Industrial Court for re-consideration of the case. He further submitted that even the conclusions which are arrived at are not borne out from the records in as much as that there is no cogent material on record to hold that the membership of the respondent No. 2 is to the extent of 1079 employees in comparison to the membership of the petitioner-Union to the extent of 640 employees. The conclusion that the membership of the respondent-Union shows 86% of the employees of the respondent No. 1 undertaking is totally incorrect in view of the fact that there is no evidence on record to support any such finding by the Industrial Court. It is further sought to be argued that the evidence on record did not disclose that for the period for which the respondent-Union was claiming the membership of the employees, there was any evidence about the payment of the membership fees by those members, nor there was any evidence regarding the financial status of the respondent-Union so as to satisfy the requirements of the provisions of law and, more particularly, Section 14 of the said Act r/w Rule 8 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Rules, 1975, hereinafter called as "the said Rules". Drawing attention to the Form-C appended to the said Rules, it was sought to be contended that even the application which was filed by the respondent-Union was not in accordance with the provisions of law and it did not accompany the required documents and this fact was not at all considered by the Industrial Court. Attention was drawn to Clauses 4, 11 and 14 of the said Form. According to the learned Counsel, before filing the application in Form-C, there has to be a meeting and for a valid and lawful meeting, it should have the necessary coram. Admittedly, there was no coram for the meeting which was held to decide about the application to be filed for recognition. Further, the evidence on record discloses that the membership fee was reduced from Rs. 100/-to Rs. 5/-per month only from the month of November, 2003, consequent to approval thereof by the competent authority whereas the respondents claim to have collected such fees in the month of August, 2003 itself. This would disclose that there was no valid membership in the month of August. It is not the case of the respondent-Union that they have collected the said fee after November, 2003. It was further submitted that in the absence of lawful meeting of competent members, there cannot be an authority to any person for filing

application u/s 14 and that is apparent from Clause 14 of the said Form. Reliance is sought to be placed in the decisions in the matters of Forbes Forbes Campbell and Co., Ltd. Vs. Engineering Mazdoor Sabha, , Transport Corporation of India Ltd. v. State of Maharashtra and Ors., reported in 1993 II CLR 531 and Nirmal Singh Vs. State of Punjab and Others,

5. Shri Sudhir Talsania, learned Senior Counsel appearing for the respondent No. 2, submitted that the impugned order may not be happily worded but the reading thereof would disclose that the conclusions therein are clearly supported by the reasons disclosed in the analysis of the materials on record. Once the Industrial Court having understood the exact nature of dispute and after taking into consideration all the materials on record and for the reasons disclosed in the order, holds that the petitioner-Union has lost the majority, and on the other hand the respondent-Union had acquired the required majority, and further that the respondent-Union having substantially satisfied all the requirements of law, the recognition having been granted to the respondent-Union, the impugned order does not warrant any interference. As regards the number of membership and the coram of the meeting, drawing attention to the evidence on record, the learned Counsel submitted that the same r/w the pleadings before the Industrial Court clearly reveal that the respondent-Union had established that it had membership of 1079 employees of the respondent No. 1 undertaking and further that though initially the meeting could not be convened on account of lack of coram, after half-an-hour the meeting was held which was clearly permissible in terms of Clause 14 of the by-laws of the Union. He further submitted that the respondent had produced the necessary Minute Books and the membership receipts collectively under Exhibit-U/6, as also produced therewith the necessary bank records regarding the deposit of membership fees and further the statement of the bank and the counterfoils of the bank deposits as Exhibit-U/10. There is also audit report as Exhibit-U/3 and membership receipt book as well as the connected documents as Exhibit-U/11 collectively. All these documents having been clearly proved and nothing having been brought on record by the petitioner to disprove them, the Industrial Court has rightly analysed the evidence on record to arrive at the conclusion that the petitioner-Union had lost the majority whereas the respondent-Union had acquired sufficient number of membership to get the recognition. As regards the amendment which was approved in November, 2003, it is the submission on behalf of the respondent that though it was approved in November, 2003, the actual amendment was carried out on 18-8-2003 and it would be effective from that day and in any case such an amendment does not require any specific approval as such by any authority.

6. Shri C.U. Singh, Senior Counsel, appearing for the respondent No. 1, has submitted that the respondent No. 1 is not supporting either of the Unions and the company is neutral in this matter. However, he has also brought to our notice the provisions of Section 28(3) and (4) of the Trade Unions Act, 1926 which provides for requirement of alterations made in the rules of the registered Trade

Unions to be sent to the Registrar and in that connection he has submitted that the alterations would obviously be effective from the date of registration of such alterations in terms of the said provisions of law.

7. The Section 14 of the said Act deals with the subject of recognition of Union other than the one to which already the recognition has been granted in terms of Section 12 of the said Act. The Sub-section (1) of Section 14 provides that 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 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. The Sub-section (3) thereof provides that 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 the said section, larger than the membership of the recognised Union, then the Industrial Court shall, subject to the provisions of Sections 12 and 14, recognise the Union applying in place of the recognised Union. In order to grant recognition to any Union other than the already recognised Union, therefore, the following ingredients of the provisions of Section 14 r/w Sections 11 and 12 will have to be satisfied:

(i) Application should disclose membership larger than the membership of the already recognised Union, for a whole of the period of six calendar months immediately preceding the calendar month in which the application is made.

(ii) Application should be filed after lapse of two years from the date of registration of the already recognised Union.

(iii) Not less than 30% of the total number of employees employed in the undertaking should be the members of the applicant-Union for the whole period of six calendar months immediately preceding the calendar month in which the application is filed. Once the above requirements are satisfied and in the enquiry held by the Industrial Court as it deems fit, if it is satisfied about the membership of the applicant-Union to be larger than that of the already recognised Union for a period of six calendar months immediately preceding the calendar month in which the applicant-Union had applied, certainly the order in favour of the applicant-Union has to follow.

8. The contention on behalf of the petitioner, however, is that mere satisfaction of requirement of Sections 11, 12 and 14 could not be sufficient to get recognition

to a new Union when there is already another Union recognised under the said Act. It is their contention that in terms of Section 61, the Government is empowered to make rules for carrying out the purposes of the said Act and accordingly has framed the said Rules and thereunder the application for recognition the registration u/s 14 of the said Act has necessarily to be in Form-C and there has to be strict compliance of the said Form by the applicant-Union.

9. Undoubtedly, Section 61 of the said Act provides that the State Government may make rules for carrying out the purposes of the said Act and, in fact, has framed the said Rules and the Rule 8 requires the application of a Union for recognition u/s 14 to be in Form-C. The Form-C enumerates the various requirements to be complied with while seeking recognition u/s 14. The Clauses of the said Form, to which attention was drawn, are Clauses 4, 11 and 14 and they read thus:

4. At a general meeting of the members of the applicant union meeting of the Executive Committee of the applicant union which was held at ...on ...day of ... 19..., it was decided that the union should apply for registration as a recognised union for (Here insert the name of the undertaking).

11(i). A member of the applicant union has to pay a monthly subscription of Rs. ...every month.

(ii) The Executive Committee of the applicant union met on the following dates during the twelve months preceding the date of the application.

(iii) The applicant union maintains minute book in which all resolutions passed by the Executive Committee or the General Body of the union are recorded.

(iv) The applicant union maintains accounts and such accounts were last audited by ... on ... and the certificate of the auditor is enclosed.

(v) The year of account of the applicant union is from ... to

14. The applicant union herewith files the following documents with a list:

(i) Registered address of the applicant union.

(ii) A list of members of the applicant union who are employed in the undertaking for which recognition is sought arranged alphabetically with a date of such employees" joining as a member.

(iii) A true copy of certificate of registration as a trade union.

(iv) Authority of the persons for filing this application.

(v) A true copy of the Constitution of the applicant union.

10. Even though Section 14 nowhere specifies that the application for recognition has to be in a particular form or as prescribed under the Rules, though it specifically provides that the application shall be accompanied by such fee not

exceeding Rs. 5/- as may be prescribed, we would have no hesitation in agreeing with the learned Counsel appearing for the petitioner that the applicant-Union, in order to assist the Industrial Court to arrive at the correct conclusion on the claim of the applicant-Union for recognition, has to furnish all the details as specified in the said Form. Though the Rules specify that the Government can make rules for carrying out the purposes of the said Act and accordingly the said Rules have been framed, it is also to be noted that the Rules have to be in consonance with the statutory provisions and the statute under which they are framed. The provision dealing with requirement of producing various materials along with the application u/s 14, as prescribed under the said Rules, may not by itself can be said to be contrary to or in excess of the rule making power. At the same time, the contention that there has to be strict compliance of those rules cannot be accepted. Substantial compliance of those rules giving necessary information to the Industrial Court to arrive at the correct conclusion on the application filed by the applicant-Union would be sufficient and merely because there has been no strict compliance of all the clauses of the said Form that would not be a cause for interference by the Writ Court in the order of the Industrial Court passed u/s 14 of the said Act. In fact, in *Forbes Forbes Campbell's* case (supra) the Apex Court had clearly observed that

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.

Undoubtedly, the Apex Court was referring to Form-A which relates to the application for registration of recognised Union which is filed u/s 11 of the said Act. The same principle will apply in case of Form-C while seeking recognition u/s 14.

11. As rightly submitted by the learned Advocate for the respondent No. 2 that the materials on record clearly reveal that the respondent No. 2 had produced all the relevant documents which were required to be produced in terms of Form-C in support of their claim for recognition. Apart from clear reference to such documents in the impugned order, the copies of the documentary evidence produced on record and placed in this petition themselves disclose the production of such documents. The contention of the petitioner, therefore, that there was no sufficient material on record to arrive at the findings which have been arrived at by the Industrial Court is totally devoid of substance.

12. It is further contention of the petitioner that though the amendment is stated to have been carried out in August, 2003 to the rules regarding the membership fee of the respondent No. 2 by reducing it from Rs. 100/- to Rs. 5/-, the registration thereof was done in November, 2003 and therefore the respondent No. 2 had no occasion to accept the membership fee of Rs. 5/- in the month of August, 2003 and to contend that they had membership in excess of the membership of that of the petitioner-Union. The learned Counsel for the petitioner has also drawn attention to para 7 of the Judgment of the Apex Court in *Forbes Forbes Campbell's* case. The Apex Court therein had held that

Although there may be technically merit in the plea that until the Registrar of Trade Unions formally approves this amendment of the union and registers it, it does not become part of the constitution. Shri F.S. Nariman, appearing for the employer, has for the purpose of this case agreed that this time infirmity need not stand in the way of the applicant union being qualified for recognition, if, otherwise, it is eligible.

The contents of para 7 of the said decision of the Apex Court undoubtedly disclose the observations to the effect that technically formal approval of the Registrar to and registration of the Trade Union would be necessary for the amendment to the constitution of the a Union and indeed the provisions of law comprised u/s 28(3) of the Trade Unions Act, 1926 provides that a copy of every alterations made under the rules of a registered Trade Union should be sent to the Registrar within fifteen days of the making of alterations. Being so, in order to set the records straight and to have notice of any alterations in the constitution or the rules of the Trade Union to the notice of the public, it would be necessary for the Trade Unions to get the alterations or amendments to the constitution and the rules to be duly registered by the Registrar of Trade Unions. However, the requirement of this provision in no way affects the decision under challenge.

13. The contention of the petitioner is that since the alterations were registered in November, 2003, the respondent-Union could not have accepted the membership fee in accordance with the alterations made prior to the registration of the alterations. The contention would have been of some substance if there was any objection on the part of the Registrar for registration of the alterations made. Nothing would prevent the Trade Union from agreeing to give effect to such alterations from August itself when there was no objection raised by the Registrar for registration of the alterations brought into force in the rules of the respondent-Union in relation to the membership fees. Besides, merely because the approval is granted in November, 2003, it did not prevent the Union from accepting the fee according to the amended clause even prior to that date, particularly in view of the approval granted by the Registrar for such alterations. Being so, the contentions in this regard sought to be raised on behalf of the petitioner are devoid of substance.

14. The contention that the impugned order is contrary to the materials on record is also without substance. Undisputedly, the impugned order takes into consideration the entire material on record. Based on the rival contentions, the Industrial Court had framed proper issues for consideration and on analysis of the evidence had arrived at the conclusion in favour of the respondent No. 2. Although it was sought to be repeatedly contended on behalf of the petitioner that there was no cogent material regarding the sufficient number of membership of the respondent No. 2 in excess to that of the petitioner-Union so as to justify an application u/s 14, however, even after perusal of the various statements of the witnesses and referring to various documents, the learned

Counsel could not satisfactorily establish that any material piece of evidence has either been overlooked or not considered. The Industrial Court having considered each piece of evidence and having been satisfied about the majority of the respondent-Union for six calendar months prior to the date of filing of the application being in excess of the membership of the petitioner-Union and, that too, by the margin of more than 900 members i.e. about 86% membership of the employees employed in the respondent No. 1 undertaking, we do not find any substance in the contention that the impugned order is contrary to the materials on record.

15. Lastly, the contention relates to the impugned order being a non-speaking order. Undoubtedly, the impugned order does not disclose elaborate reasonings in support of the conclusions arrived at but it cannot be heard to say that the impugned order does not disclose any reasoning for the conclusions arrived at. It is not the quantity that is material. If in substance the impugned order discloses proper application of mind by the Industrial Court to the issues which were required to be considered and on consideration thereof having arrived at a logical and reasonable conclusion, then certainly it would not warrant interference in writ jurisdiction.

16. The Apex Court in Nirmal Singh's case (supra) has held that the Labour Commissioner had to give reasons as to why he came to the conclusion that the appellant is not a workman. In the said case, the Labour Commissioner had merely stated in his order that the post held by the appellant did not fall within the category of workman and the said order did not disclose any reason to arrive at the said conclusion. That is not the case in the matter in hand. The finding about the entitlement of the respondent-Union to get recognition u/s 14 of the said Act has been preceded with the necessary reasoning that the petitioner-Union has lost the membership of majority of the members and the respondent-Union has proved that it has 86% of the membership of the employees employed in the respondent undertaking. This reasoning is further corroborated by the materials on record reproduced in the impugned order. The impugned order cannot be equated with the order of the Labour Commissioner which was the subject-matter of challenge before the Apex Court in Nirmal Singh's case.

17. The learned single Judge of this Court in Transport Corporation of India's case (supra) had observed that it was necessary for the Tribunal to have considered each case on merits and while doing so it was required to consider whether any employee and if so, which of them had accepted the employment knowing fully well that their services are liable to be transferred, whether the agreement between the employer and the employee contained any specific term regarding transfer and if so, whether corresponding benefits were given to the employees, etc. In those cases, the learned single Judge was dealing with the matter wherein the awards of the Tribunal were challenged in respect of wages, D.A. and non-transfer of the employees out of Bombay and Thane. The learned single Judge had found that the Tribunal had not given any reason at all for

passing the order regarding the transfer. Non-disclosure of any reason is different from sufficiency of the reasoning to justify the conclusion. The impugned order is not a case where no reasons are disclosed. Whether the reasons disclosed therein are sufficient to justify the conclusions arrived at by the Industrial Court is totally different from total absence of the reasoning. The contention of the learned Senior Counsel on behalf of the petitioner about the absence of reasonings is totally devoid of substance. Merely because reasons are not elaborately discussed, that by itself will not be sufficient to warrant interference in the impugned order. Whatever reasons which are on record, the petitioner has not been able to challenge the same to be insufficient to justify the conclusions arrived at.

18. As no other ground is canvassed in the matter, there is no case made out for interference in the impugned order. Hence, the petition fails and is hereby dismissed. The rule is discharged with no order as to costs.