

(2008) 03 BOM CK 0083
In the Bombay High Court
Case No : Writ Petition No. 803 of 2008

Shramik Utkarsha Sabha

APPELLANT

Vs

Maharashtra Film Stage and Cultural Development
Corporation Limited and Bhartiya Kamgar Sena

RESPONDENT

Date of Decision : 13-03-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 12, 19
Trade Unions Act, 1926 — Section 14

Citation : (2008) 3 BomCR 770 : (2008) 3 LLJ 167

Hon'ble Judges : Swatanter Kumar, C.J.; J.P. Devadhar, J

Bench : Division Bench

Advocate : A.V. Bukhari, instructed by P.M. Palshikar, for the Appellant; K.S. Bapat and N.R. Patankar for respondent No. 1 and M.D. Nagle, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, C.J.—The petitioner in this petition under Article 226 of the Constitution of India takes exception to the order dated 19th December, 2007, passed by the Member, Industrial Court, in Application (MRTU) No. 12 of 2003.

2. The petitioner is a trade union registered under the Trade Unions Act, 1926 and is also a recognised union u/s 12 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, hereinafter referred to as "the Act". Respondent No. 1 which is a Company duly registered under the provisions of the Companies Act, 1956, has its undertaking at Goregaon (East), Mumbai. Respondent No. 2 is also a trade union registered under the Trade Unions Act, 1926. Respondent No. 2 made an application before the Industrial Court u/s 14 of the Act alleging that it has the majority membership of the employees working in the undertaking of respondent No. 1 and, therefore, it should be registered as a recognized union for respondent No. 1 undertaking.

The petitioner as well as respondent No. 1 filed replies/written statement. Respondent No. 1 had stated that the petitioner is the recognised union functioning in the first respondent-Corporation and they do not have any proof about the membership of the employees of the two unions. On these pleadings of the parties, on 8th July, 2004, the Industrial Court framed the issues and vide its order dated 25th February, 2005, the Industrial Court appointed an Investigating Officer under the relevant provisions of the Act to verify the membership of the petitioner as well as the respondent No. 2 Union. The Investigating Officer called for various documents and records of both the Unions and after verifying the records gave his report dated 28th November, 2005 to the Industrial Court stating that the Corporation had 198 employees in their employment during the relevant period of six months and that the respondent No. 2 Union has shown 156 employees as their members but they have only 148 valid members. Out of 148 valid members, 45 are common members and that the percentage of membership of the respondent No. 2 Union including common members is 74.74 per cent and excluding common members is 52.02 per cent. With regard to the petitioner Union, the Investigating Officer has submitted the report that they had claimed membership of 148 employees out of which only 84 are valid members and the percentage of the membership of the petitioner union including common members was 42.42 per cent and excluding common members was 19.69 per cent. Objections to these reports were filed by the petitioner which were considered and finally vide order dated 19th December, 2007, the Industrial Court allowed the application of respondent No. 2. Aggrieved from this order, the petitioner filed the present writ petition challenging the legality and validity of the order primarily on the ground that the Industrial Court failed to appreciate the evidence produced before it, it did not dispose of the objections filed by the petitioner in accordance with law and finally that the findings recorded were untenable as it violated the principles of natural justice.

3. During the course of hearing, the learned Counsel appearing for the petitioner, with some emphasis, argued that the second respondent did not represent the majority of the employees working in the first respondent Corporation and it could not have recorded the finding that 25 persons who had deposed in the Court stated that they are members of the respondent No. 2 Union from the year 1995-96 and that they were the only valid members of the respondent No. 2 Union.

4. At the very outset, we may notice that in the present writ petition, the challenge is primarily based upon appreciation of evidence. Unless and until the conclusions arrived at by the Industrial Court are so perverse that no person with common prudence could have arrived at the conclusion, the Court would not be inclined to interfere in such matters. We are unable to accept the contention of the petitioner that the finding recorded by the Industrial Court is either perverse or based on no evidence. It is a settled principle of law that the members who are found to be common to both the Unions cannot be included and they essentially would have to be excluded from counting while determining the

majority of either of the parties. It is nobody's case and, in fact, neither has been argued that the members with common membership were considered as members of a particular Union. A Division Bench of this Court in a recent judgment dated 11th October, 2007, in the case of Maharashtra Rajya Rashtriya Kamgar Sangh v. Kamgar Suraksha Sangh Writ Petition (Lodging) No. 1951 of 2007 held as under.

5. Reliance on behalf of the petitioner was placed upon the judgment of the Supreme Court in Automobile Products of India Employees' Union Vs. Association of Engineering Workers, Bombay and others, to contend that the procedure prescribed for determination of majority has to be followed in pith and substance and exclusive membership of the contesting unions continuously over the specified period has to be the basis, while overlapping membership being ignored. In that case, the Supreme Court was concerned with a case where the Industrial Court had directed secret ballot method for determining the majority with the consent of the parties. The Court held that despite consent of the parties, this method, being opposed to the specific provisions of the Act, could not be accepted and the illegality was incurable. Of course, the overlapping membership was also stated to be impermissible. These established principles of law hardly need any discussion in the facts and circumstances of the present case. The Industrial Court satisfied itself that respondent No. 1 Union was able to prove its majority during the relevant time. It recorded a finding also to the effect that all the relevant records had been maintained by the Union. The findings are primarily based upon appreciation of evidence which is neither perverse nor illogical. This Court would not interfere with the order of the Industrial Tribunal merely because another view would be possible on the same facts and evidence. No legal infirmity has been brought to our notice in following the prescribed procedure. Nothing has been brought on record to show that members with common membership were considered by the Tribunal as members of a particular Union. The persons who had given resignations from the Petitioner Union have filed affidavits to show their solidarity to respondent No. 1 Union and their participation. In these circumstances, we are unable to hold that the procedure for determination of majority has tilted the balance in favour of either party prejudicially".

5. Besides noticing the above principles, we may also usefully refer at this stage that prior to passing of the impugned order, the Investigating Officer had submitted a detailed report. The Investigating Officer discussed the case of both the unions and noticed that 49 union employees joined the petitioner union on and from 28th June, 2003 and they were not enjoyed the membership of the petitioner Union during the entire relevant period i.e. from 1st February, 2003 to 31st July, 2003. Thus, they were treated as invalid members. The relevant part of the Investigating Officer's report reads as under:

26. The Company has submitted the list of 198 employees in employment during the relevant period. The Applicant Union has shown 156 employees as their

members, however the Applicant Union has 148 valid members. There are 45 common members. The percentage of the membership of the Applicant Union including common members is of 74.74% and excluding common members is of 52.02%.

Similarly, the non-applicant union has shown 148 employees as their members, however, the non applicant union has 84 valid members. There are 45 common members. The percentage of the membership of the non applicant union including common members is of 42.42% and excluding common members is of 19.69%.

27. The applicant union and non applicant union have complied with Section 19 of the MRTU & PULP Act, 1971, during the relevant period.

28. The non applicant Union has filed its objections by letter dated 22.6.05 received on 27.6.05 (Annexure "D") regarding the documents of the applicant Union. The said letter is enclosed herewith for perusal of the Hon''ble Court. Similarly the Applicant Union has also filed letter dated 7.7.05 (Annexure "E") stating therein its inability to produce the entry fee documents. The said letter is also enclosed herewith for perusal of the Hon''ble Court.

6. This report was relied upon by the Industrial Court while passing the impugned order. The Industrial Court found that the factual discussion recorded by the Investigating Officer was correct on the basis of the documents i.e. receipt books, cash book, etc. During the course of proceedings before the Industrial Court, some of the persons who had filed affidavits were not offered for cross-examination and their evidence was correctly not taken into consideration by the Industrial Court.

7. Another issue raised by the petitioner was that the documents sought to be produced on record were not permitted to be taken on record by the Industrial Court on the one hand while on the other, the Industrial Court itself took cognizance of the letter dated 10th April, 1995 produced by the second respondent stating that it represents majority of employees working in the first respondent and they are the sole bargaining agent of its employees. We also cannot accept this contention inasmuch as mere reference to a letter would not dislodge the finding recorded by the Industrial Court based upon the oral and documentary evidence produced before it. Furthermore, the report of the Investigating Officer directly covers the issue in controversy. The reference to documents can safely be ignored as the finding recorded by the Tribunal is otherwise sustainable on the basis of the evidence on record. The Petitioner has failed to demonstrate as to how the computation arrived at by the Industrial Court is incorrect. The respondent No. 2 had proved the majority of membership to the extent of 52.02 per cent excluding common members. The findings recorded by the Industrial Court do not call for any interference as it neither suffers from any apparent error of law or perversity in appreciation of evidence. Therefore, the writ petition is dismissed, leaving the parties to bear their own

costs.