
(1984) 09 GUJ CK 0022
In the Gujarat High Court

Shravankumar Mahadev Dekote and Others	APPELLANT
Vs	
The Arvind Mills Ltd. and Others	RESPONDENT

Date of Decision : 26-09-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 21, 301
Industrial Disputes Act, 1947 — Section 36

Citation : (1985) 2 GLR 767

Hon'ble Judges : R.J. Shah, J;B.K. Mehta, J

Bench : Division Bench

Judgement

B.K. Mehta, J.—In this group of petitions a short but interesting question arises about the right of an individual workman vis-a-vis trade union and particularly representative union which has been invested with the right of exclusive representation. The basic question in all these petitions is : Whether an individual workman can be excluded from initiating Industrial Court proceedings or excluded from such "proceedings where the order is passed on concession made by the representative union resulting into some evil consequences for a workman or a group of workmen? This question arises in diverse facts and circumstances. In the first group viz. Special Civil Applications Nos. 1747/80, 1023/73 and 453/79 it relates to the dispute between the petitioners and the respondent mill company in the matter of bonus, while in Special Civil Application Nos. 1424/79 and 850/79 it relates to the industrial court proceedings taken for declaration on cessation of workmen as illegal strike. By way of sample, facts from each of the two groups are briefly set out herein-below so as to appreciate the precise question in proper perspective.

2. In the first group of the aforesaid three special civil applications, we have taken the sample facts of first Special Civil Application (No. 1747/80). Respondent No. 1-mill-company made the payment of bonus at the statutory rate in terms of the settlement between the mill-company and the Textile Labour Association (hereinafter referred to as "the TLA) which is the representative trade union. The petitioners called a meeting of the workmen in the employment

of the first respondent-mill-company wherein petitioners Nos. 1 to 5 were appointed as representatives of "the workmen in the employment who attended the said meeting. It is claimed by the petitioners that 80 to 90 of the workmen working in the first respondent-mill-company attended the said meeting. The sixth petitioner is a trade union registered under the provisions of the Trade Unions Act, 1926. According to the petitioners, the respondent-mill-company ought to have paid to the workmen bonus at the rate of 20 per cent instead of 8.33 per cent which is the statutory rate under the Payment of Bonus Act, 1965 and at which rate the bonus was granted in terms of the settlement with the representative trade union-respondent No. 2 herein. The petitioners, therefore, gave a notice calling upon the first respondent-mill-company to make payment at the rate of 20 per cent in the year 1977 and also addressed a letter to the Labour Commissioner of the State Government and requested him to hold conciliation proceedings and to refer the dispute to the competent court for adjudication in case of failure of conciliation proceedings under the Bombay Industrial Relations Act (hereinafter referred to as "the BIR Act"). The respondent-mill-company did not respond to the demand made by the petitioners and the Assistant Labour Commissioner, respondent No. 3 herein, also rejected the request made by the petitioners to hold conciliation proceedings and to refer the matter to the Court by the impugned order of May 5, 1979 on the ground that since the Textile Labour Association respondent No. 2 herein was the representative union, the petitioners were not competent to raise the dispute particularly because a settlement for the payment of bonus for the year 1977 had been already effected between the mill-company and the said representative trade union. The Assistant Labour Commissioner rested the impugned order on the provisions contained in Section 78 of the BIR Act since the right of representation of the workmen was exclusively available to the representative union which has entered into the settlement in the matter of bonus for the said year. The petitioners, therefore, have moved this Court for challenging the impugned order.

3. From the second group of the last two special civil applications, we set out the facts from Special Civil Application No. 1424 of 1979. Respondent No. 1 is a textile mill while respondent No. 2 is a recognised representative union the TLA. Petitioner No. 1 is a minority union of which petitioner Nos. 2 to 18 are the workmen-members. It appears that a dispute arose between the Mill-company and the workmen about the recess period. A settlement was arrived at between the Mill-company and the representative trade union-respondent Nos. 1 and 2 respectively, providing for relay system of recess which was approved by the Chief Inspector of Factories. From 17th to 19th December, 1978, some workmen including the petitioners enjoyed recess as was permissible before the agreement. Respondent No. 1-mill-company, therefore, sought a declaration by making an application to the Labour Court, Ahmedabad under the relevant provisions of Sections 78 and 79 of the BIR Act that such an action of the workers of the Ring Frame Department and Doubling Department amounted to

illegal strike. A public notice was issued by the respondent-mill company in one of the city dailies, namely, "Jansatta" of October 20, 1978 calling upon the workers to remain present before the Second Labour Court, Ahmedabad on October 26, 1978. Respondent No. 2-Union was arrayed as a party-opponent in the said proceedings. The union filed its appearance. By its written statement placed, it was, inter alia, stated that the said union had not instigated any of the workers to resort to strike nor had it advised to do so. The petitioners, along with other workers, made an application to the Labour Court praying that they may be joined as opponents in the application. It appears, however, that that application was not pressed, for reasons which are not clear, by the Advocate of the petitioners which the petitioners claim was without their knowledge and consent. The petitioners claim that they came to know about the final order made by the Labour Court in those proceedings only when it was notified on the notice board of the mill-company. The petitioners contend that the Labour Court would not have granted the application even if it had been pressed for since the Court would have heard the representative trade union only and decided the matter. The petitioners make a grievance that the representative trade union-respondent No. 2 herein expressly declared before the Labour Court that they did not want to lead any oral evidence in the matter nor did they intend to cross-examine one Shri Jashbhai Patel, who filed an affidavit on behalf of the respondent-mill-company since he happened to be the Manager at the relevant time. The respondent-union, according to the petitioners, did not produce any other documentary or oral evidence challenging the version of the respondent-mill-company that the objected action of some of the workers did not amount to strike. The Labour Court, however, by its impugned order of February 6, 1979 declared that the workers of Ring Frame Department working in the first, second and third shifts and those working in the first and second shifts of Doubling Department resorted to illegal strike from 17th October, 1978 and continued to do so till October 19, 1978. The respondent-mill-company, pursuant to this order, initiated disciplinary proceedings against the petitioners for participation in the illegal strike by issuing show-cause notices on them. The petitioners submitted their replies to the show cause notices contending that there was no strike since they merely, enjoyed the recess. They requested for supply of the copy of the order of the Labour Court in Gujarati since they did not understand English. Respondent-mill-company, however, put up a notice on March 27, 1979 informing the concerned workers including the petitioners that because of the order of the Labour Court there was a break in the continuity of the service of the said employees and, therefore, their services would be counted from 7-2-1979 as fresh services for purposes of gratuity under the Payment of Gratuity Act, 1972. The petitioners have, therefore, moved this Court for appropriate writ, order and direction to quash and set aside the said impugned order.

4. In this group of petitions, the petitioners have challenged the constitutional validity of Sections 2(3), (4), 27A, 32, 33, 78(1)(c), 83A, 103 and 104 of the BIR Act as violative of Articles 14, 19, 21 and 301 of the Constitution of India. On

behalf of the petitioners, in first three special civil applications the arguments were advanced by Mr. J. G. Shah while in the last two special civil applications, the arguments were advanced on behalf of the petitioners by Mr. Girish Patel. Though they have argued the matters at length particularly in the context of their respective petitions, the following broad contentions which are common in these special civil applications have been raised at the time of hearing.

(1) Section 2(3) and (4) of the BIR Act conferring on the State Government the power to issue notifications applying all or any of the provisions of the BIR Act to all or any other institutions is bad in law and void as being violative of Article 14 of the Constitution inasmuch as no guideline is prescribed for the exercise of the power and, therefore, it is uncanalised and discriminatory in so far as the textile workers are denied the right of written/oral representation through unrepresented union which is available to other workers.

(2) The said power inasmuch as it tends to abridge the right of association is violative of Article 19(1)(c) of the Constitution of India.

(3) The impugned sections deprive a worker not being a member of a representative union of personal liberty without fair, just and reasonable procedure established by law inasmuch as he is denied participation in proceedings to decide whether his abstention from work in a given situation constitutes illegal strike the declaration in respect of which may entail serious evil consequences for him and, therefore, bad in law and void as being violative of Article 21 of the Constitution of India.

(4) The impugned provisions are arbitrary since there is no guideline nor any procedural check or safeguard so as to ensure just and fair treatment to the affected workers.

5. Before we deal with these contentions, it is necessary to shortly refer to the scheme contained in the BIR Act. The BIR Act is designed to regulate the relations of employer and employees and to make provisions for settlement of industrial disputes and to provide for certain other consequential purposes. It should be recalled that the BIR Act, 1946 was put on the statute book with effect from April 15, 1947. It has been amended from time to time before its application to the Gujarat State after bifurcation of the bigger bilingual State of Bombay as well as after its extension to the area of Saurashtra & Kutch in State of Gujarat which was effected by the Gujarat Act No. 20 of 1961. In the first instance, it was adopted in the Bombay area of the Gujarat State and was extended later to the Saurashtra and Kutch areas of the State of Gujarat by the Bombay Industrial Relations (Gujarat Extension and Amendment) Act, 1961 (Gujarat Act No. 20 of 1961). By Section 2(3), the BIR Act was made applicable to those industries to which the Bombay Industrial Disputes Act, 1938 applied immediately before the commencement of the BIR Act. However, by the proviso added to the said sub-section by the Bombay Act of 1955, the said Act ceased to apply to Imperial Bank of India and any banking company as defined in the

Banking Companies Act, 1949 having branches or establishments in more than one State with effect from the application of the said amending Act, 1949. By Section 2(4), the State Government has been empowered to apply all or any of the provisions of the BIR Act to all or any other industries whether generally or in local area as may be specified in the notification. Section 3 is the legislative dictionary by which different terms have been defined. It is not necessary to refer to all the terms defined in the said section. We would refer to the necessary terms in course of deciding the contentions raised by the Learned Counsel. For the present purposes it is sufficient to say that the definitions which would be relevant for the purposes of the present petitions are of the terms "approved union", "closure", "industrial dispute", "industrial matter", "primary union", "qualified union", "registered union", "representatives of employees", "representative union", "stoppage" and "strike".

6. Chapter II of the BIR Act provides for the authorities to be constituted or appointed under the Act.

7. Chapter III provides for registration of unions. A few sections of this Chapter be shortly referred to. Section 12 enjoins the Registrar to maintain register of registered unions as well as approved unions. Section 13, which is an important section, provides for application for registration. It prescribes that any union having a membership of not less than 25% of the total number of employees engaged in any industry in any local area for the period of three calendar months immediately preceding the calendar month in which it applies, may apply for registration as a representative union. Sub-section (2) thereof entitles a union enjoying membership of not less than five per cent of the total number of employees engaged in such industry in the said area for the period of three months as above, to apply for being registered as qualified union in an industry where there is no representative union. Sub-section (3) of Section 13 entitles a union which enjoys membership of not less than 15% of the total number of employees employed in any undertaking in such industry in the said area and satisfying the conditions prescribed under the Act (vide Section 23) to apply as a primary union for such industry where there is neither a representative union nor a qualified union. Section 14 prescribes the procedure for registration. Section 15 provides for cancellation of registration and Section 16 provides for registration of another union in place of the existing registered union. The other Sections 17 to 22 are of not much importance for purposes of the present petitions.

8. Chapter IV deals with approved unions. It is not necessary to refer to all the provisions contained in Sections 23 to 26 in this Chapter. Suffice it to say that a union is entitled to be entered in the list or the Registrar being satisfied that the union has made rules providing for the prescribed membership subscription of not less than fifty paise for regular holding of meetings, for maintaining correct minutes of the resolutions passed by the general meeting or executive committee, about the audit of the accounts annually by Government Auditor and for resolution of the industrial disputes through arbitration or wage board and for

prohibition of strike without exhausting all the methods provided by the Act and the majority of the members voting by ballot in favour of strike. The officers and members of the approved unions are entitled to certain rights and benefits as prescribed in Sections 25 and 26.

9. Chapter V deals with the representatives of employers and employees and appearance on their behalf. The provisions which have been mainly in dispute between the parties and under challenge are part of this Chapter. Section 27 provides for recognition of combination of employers as association of employers. It is the State Government which has, by notification in Official Gazette from time to time, to recognise any combination of employers in an industry in any local area as an Association of employers for the purpose of the BIR Act, provided the object of the combination is for the regulation of conditions of employment in the said industry. On such recognition being granted, the association is entitled to represent any member employer or a non-member employer where he has agreed to be so represented and intimated accordingly to the authority in any proceeding under the Act. Section 27A is an important provision which was inserted by the Amending Act, viz. Bombay Act 55 of 1949. It provided as under:

27A. Save as provided in sections 32 and 33 no employee shall be allowed to appear or act in any proceeding under this Act except through a representative of employees.

This section was amended again by the Gujarat Act No. 20 of 1972 so as to add one more section viz. Section 33A where the representation can be through the representative of the employee. Section 28 provides for the election of the representatives of the employees where there is no representative union in respect of the industry in any local area. Section 29 prescribes that the majority decision of the elected representatives shall be the decision of all the said representatives. Section 30 provides the order of preference for acting as a representative of the employees in an industry in a local area. It is sufficient to note that in this order of preference, a representative union for such industry has the first right to appear as a representative of the employees. Sections 32 and 33 are important provisions and therefore have a great bearing on the contentions urged by the learned Advocate. The effect of the combined reading of Sections 32, 33 and 33A broadly stated is as under.

10. An individual person, irrespective of his being an employee, may be permitted to appear in any proceeding on behalf of an employee or a representative union before a board, an arbitrator, the Labour Court or the Industrial Court in the interest of justice, except in those proceedings where representative union has appeared as a representative of the employees. If the subject matter of such proceeding before a Labour Court or an Industrial Court is not the legality or propriety of an order of dismissal, removal, discharge, retrenchment or suspension of an employee, subject, however, to the rights of the parties to the dispute referred to the arbitration of Labour or Industrial Court

u/s 72 to appear and act in proceedings before such Court.

11. Chapter VI dealing with the powers and duties of Labour Officers and Chapter VII dealing with the standing orders are not of much importance for the present purposes.

Chapter VIII which is again an important part of the BIR Act provides in details as to how changes can be effected in respect of industrial matters specified in Schedules I, II and III.

Chapters IX and IX-A provide for joint committee and joint management councils. Chapters X and XI provide for conciliation proceedings and arbitration.

Chapter XII is again important for the purposes of these petitions since it provides, inter alia, for the powers of Labour Court. Section 78 of this Chapter empowers Labour Court to decide amongst other things whether closure or stoppage or a strike is illegal under the Act and to try any offence punishable under the Act which is committed within its local limits, on receipt of an application. The proceedings before Labour Court in respect of different matters provided in Section 78A shall commence on an application made by any party to the dispute or an application by a Labour Officer or a representative union. The proceedings regarding declaration of a strike etc. as illegal can be commenced on an application made by an employer or employee directly affected or a Labour Court or a representative union. On receipt of such an application, the Labour Court is obliged to issue a notice to all the parties affected by the dispute in the manner prescribed under the Rules and the Court may permit the parties, subject to the provisions contained in Chapter V which includes Sections 32, 33 and 33A to appear in the manner provided by the provisions of Sections 80 and 80-C. Section 80A provides that if the proceeding initiated by a Labour Officer or an employer u/s 79 affects numerous employees having the same interest, the Labour Court may permit one or more employees to appear and defend the application on behalf of all such affected persons. Section 80B entitles a person, not permitted to appear u/s 80A, but on whose behalf the application is defended, to apply to the Court to make him a party to such application, and the Labour Court will grant such an application if it is satisfied that his not being allowed to be joined as a party would materially and prejudicially affect his interest. Similarly Section 80C entitles numerous employees having the same interest to file an application with the permission of the Labour Court through one or more of such employees u/s 79. Sub-section (2) again entitles an employee on whose behalf such an application is made to be made a party to such application if his interest is going to be materially prejudiced by his absence. Section 83A is another provision which is under challenge in these petitions which precludes the legal practitioner from appearing before the Labour Court save with the permission of such Court, except in a proceeding in connection with an offence under the Act. The other sections of this Chapter are not material.

12. Chapter XII-A and XII-B provide respectively for Wage Boards and State Wage Board. Chapter XIII provides for industrial arbitration.

Chapter XIV deals with illegal strikes and lock-outs and provides when a strike or a stoppage or a lock-out would be illegal under sections 97,97A and 93. Section 99 empowers the State Government to make reference to Industrial Court for declaration whether any proposed strike, lock-out or closure or stoppage would be illegal.

Chapter XV provides for Court of Inquiry.

Chapter XVI provides for different penalties. One of the sections, namely, Section 103 is important for the present purposes which provides for penalty for declaring or commencing illegal strike or illegal stoppage.

Chapter XVII provides for record of Industrial matters and Chapter XVIII includes miscellaneous and consequential provisions. It is in this backdrop of the legislation that we have to deal with the contentions.

13. The petitioners are aggrieved because they are excluded from participating in proceedings where they claim that their interests are materially and prejudicially affected. In Special Civil Application No. 1747 of 1980, it should be cancelled, the Labour Commissioner refused to make reference on the demand of a section of aggrieved workers for higher bonus on the ground that there is a settlement between the respondent-company and the representative union. In Special Civil Application No. 1424 of 1979 the petitioners are aggrieved since their application for being "joined as parties to the proceedings initiated by the employer for declaring cessation of work by a section of workers including the petitioners as illegal strike while in Special Civil Application No. 850 of 1979 the petitioners are aggrieved as the Labour Court refused to give them hearing in proceedings initiated by the employer for declaration that petitioner Nos. 1 to 9 had resorted to illegal strike on 3rd January 1979 by refusing to carry out the assignment entrusted to them in pursuance of the agreement between the employer and the representative union. It is because the petitioners feel aggrieved by being excluded by the Labour Court from participation in the proceeding which materially and prejudicially affects them that they have moved this Court and challenged the constitutional validity of the various provisions set out as above.

14. Before we deal with the contentions urged on behalf of the petitioners in these special civil applications, we may refer to the settled legal position in the matter of exclusive right of the representative union to represent workers before Labour Court, since all these contentions urged on behalf of the petitioners before us in the ultimate analysis boil down to one crucial problem as to whether in view of the scheme of the BIR Act the right of individual workman to participate in the proceeding affecting his interest materially and prejudicially is excluded by appearance and act of the representative union in such proceedings, and whether such an exclusion would violate the fundamental right of the freedom of expression or association under Article 19(1)(a) and (c) and would be

unreasonable and arbitrary and, therefore, violative of Article 14 of the Constitution of India. The question has been concluded as back as 1954 by the Supreme Court in *Raja Kulkarni v. The State of Bombay* AIR 1954 SC 73 in the context of a conviction of President and Secretary of a minority trade union for having committed offence u/s 27 of the Industrial Disputes (Appellate Tribunal) Act, 1950 for instigating or inciting others to participate in an illegal strike under the said Act. One of the contentions urged on behalf of the appellant-convict was that Section 27 was violative of Article 19(1)(a) and (c) of the Constitution. In repelling this contention, the Supreme Court referred to the provisions of the Bombay Industrial Relations Act, 1946, particularly those dealing with different types of categories of unions and held that the contention that the Bombay Industrial Relations Act inasmuch as it gives preference to a trade union upon an artificial test of having greater percentage of membership was arbitrary, unreasonable and tends to affect the fundamental right of freedom of speech and expression or the forming of an association is one without any merit. Bose J., speaking for the Court observed as under:

It is obvious that the Act imposes no restriction either upon the freedom of speech and expression of the Textile workers or their right to form associations or unions; indeed it is not denied that the workers have already formed as many as three Unions, though they do not exhaust the number of workers in Bombay for it leaves as many as 65 percent of workers, unorganised who do not belong to any trade Union. The statute lays down the minimum qualification of 15 percent of membership to enable the Union to be called a "representative Union", so as to represent the interests of the entire body of workers in their relations with the employers. After laying down the test of not less than 15 per cent it was perfectly reasonable not to allow any other Union such as the appellants to interpose in a dispute on behalf of the Textile workers when they did not command the minimum percentage or when their membership fell below the prescribed percentage. It is perfectly open to the appellants to enlist that percentage or even a higher one and claim precedence over the Rashtriya Mill Mazdoor Sangh so as to be able to represent the interests of all the workers. The right to freedom of speech and expression is not denied to the appellants, nor are they prohibited from forming associations or Unions. The Act makes no discrimination between Textile workers as a class but lays down a reasonable classification to the effect that a certain percentage of membership possessed by a Union will be allowed to represent the workers as a class to the exclusion of others, but there is nothing to prevent the other unions or other workers from forming a fresh Union and enrolling a higher percentage so as to acquire the sole right of representation. The appellants challenge the validity of the Act as infringing their fundamental rights and yet they base their case of discrimination on the provisions of the same Act. This position is not in accord with reason or principle.

15. In *Santuram Khudai Vs. Kimatrai Printers and Processors Pvt. Ltd. and Others*, , where in an appeal from the decision of this Court in Special Civil

Application No. 1854 of 1976, the Supreme Court was concerned with the effect of Sections 80, 27 A, 30, 32 and 33 of the Bombay Industrial Relations Act. Kimatrai Printers were an undertaking in textile processing industry. The General Workers Union, Bhadra, which was respondent No. 2 in appeal before the Supreme Court was a representative union of all the employees of the various undertakings in the textile processing industry in the local area of Ahmedabad city and city taluka and it was registered and recognised as such under the provisions of the BIR Act. Pursuant to the notice for change in respect of matters governed by the earlier award of September 29, 1975 pertaining to pay-scales, dearness allowance, leave holidays etc., a reference was made to the Industrial Court u/s 73 A of the BIR Act in which an interim settlement was effected between the parties on November 17, 1977. Some of the workers of Kimatrai Printers struck work from September 24, 1976. The employer, therefore, made an application to the Labour Court at Ahmedabad u/s 79 for a declaration that the action of the workers mentioned in the annexure to the application amounted to an illegal strike. A public notice was issued in one of the city dailies on September 27, 1976. The representative union, namely, General Workers Union, Bhadra, appeared and filed written statement admitting that the strike resorted to by the said workmen was illegal. Meanwhile, a new union of workers of Kimatrai Printers was formed and styled as New Labour General Trade Union, Ahmedabad which was also registered. The union raised certain demands which were not heeded to by the employer on the ground that it was not a representative union. Some attempt was made by the Union to negotiate for settlement but met with unfavourable response. The New Union, therefore, gave a notice of strike on September 2, 1976 pursuant to which 131 employees went on strike with effect from September 24, 1976 as already stated above. In the proceedings u/s 79 initiated by the employer as aforesaid, the appellant Santuram and five of his other colleagues made an application to the Labour Court for being impleaded as party to the said proceedings and allowed to appear and defend the same. By another application, the appellant Santuram and his other 15 colleagues sought declaration from the Labour Court that the strike was legal. Both these applications were rejected by the Labour Court and the declaration as prayed for by the employer was granted. The appellant and one of his colleagues moved this High Court praying that the orders of the Labour Court rejecting the applications of the workers and allowing the application of the employer be quashed. This Court summarily dismissed the petition. In appeal to the Supreme Court, the Supreme Court ruled that the combined reading of the aforesaid sections leaves no room for doubt that consistent with its avowed policy of preventing the exploitation of the workers and augmenting their bargaining power, the Legislature has clothed the representative union with plenary power to appear or act on behalf of the employees in any proceedings under the Act and has deprived the individual employees or workmen of the right to appear or act in any proceeding under the Act where the representative union enters appearance or acts as representative of employees. The Court further ruled that individual employees do not get a right even with the help of

exceptions embodied in sections 32 and 33 to appear or act in a proceeding under the Act where the representative union enters appearance. The workers have no right even on the ground that the union is not acting for and on behalf of the employees but is acting mala fide and against the interests of the employees, since the motive of a representative union has no relevance while considering the provisions of Section 27-A and Section 32 and 33 which, in the opinion of the Supreme Court, impose an absolute ban on the appearance of any individual employee in any proceeding under the Act where the representative union chooses to appear or act as representative of the employees, and if the employees find that the representative union is acting in a manner which is prejudicial to their interests, their remedy lies in invoking the aid of the Registrar under Chapter III and asking him to cancel the registration of the Union. In this connection, it is profitable to refer to the decision of the Division Bench of Bombay High Court in Raja Kulkarni's case (1951 Bom 105) which was upheld by the Supreme Court. In the context of the contention that to cloth a union with representative capacity merely because it represents 15% of the workers and to exclude the other workers not being members of such union from participation where such representative union enters appearance is virtually to deny the overwhelming majority of 85% of workers the right of hearing. The Division Bench could not persuade itself to agree with this submission and it observed as under:

(18 .. it cannot possibly be said that the employees were not properly represented before the Industrial Court. We have no doubt that other more effective ways may have been found of representing labour before the Industrial Court. Section 27A is particularly open to criticism in so far as the method of representation during the compulsory arbitration by the Industrial Court is concerned. We can understand that where the method of conciliation or voluntary arbitration is sought to be employed, it would make for smooth working in case the people who represent labour speak with one voice, and if the representatives were chosen by a single transferable vote or by other kinds of proportional representation, it can easily happen that different groups of workers in the textile industry would have one or more representatives each before the conciliator, and it would be difficult for the conciliator to bring about any conciliation if not only the employers and the employees were at loggerheads, but the employees did not speak with one voice and there was a greater contest between them inter se than between the employers and the employees. But where the question is of compulsory arbitration and the Industrial Court has to act on grounds of equity, a better method of representing labour could possibly have been devised; but that is after all a question for the Legislature. It is not in dispute before us that if instead of the present method of ensuring representation of labour before "the Industrial Court the Legislature had provided for election of only one person from a sort of electoral college to represent labour, no exception could have been taken. In that case, the result may have been indistinguishable from the one which is brought about at present. It is quite conceivable that each one of the

different Unions would put forward a candidate of their own. It may well happen that the representative who secured the largest number of votes would be really speaking the representative of the largest Trade Union. It could then hardly be contended that the provision by which such a result was brought about violated any particular provision of the present Constitution....

16. In *Girja Shankar Kashi Ram v. The Gujarat Spg. & Wvg. Co. Ltd.* (1962) 2 SCR 890, pursuant to the notice of change u/s 42(1) of the BIR Act given by a large section of ex-employees of the respondent-company, which had closed its business and sold its assets to Tarun Commercial Mills Co. Ltd. for enhanced compensation than that agreed to by the TLA which was a representative union in settlement entered into by the said Union with the old company, in appeal before the Labour Appellate Tribunal, an application was made before the Labour Court which was rejected on the objection being raised by the TLA. The aggrieved workers' writ petition being rejected by the High Court carried the matter in appeal before the Supreme Court. The Supreme Court ruled that where a representative union appears in any proceeding under the Act, no one else can be allowed to appear, not even the employee at whose instance the proceedings might have been started u/s 42(4). Where, however, the appearance is by any representative of employees other than a representative union, the authorities u/s 32 can permit the employee to appear himself in all proceedings before them. The bona fide or mala fide of the representative of employees can have nothing to do with the ban imposed by Section 27 A on the appearance of any one else except the representative of employees as defined in Section 30. The Supreme Court specifically rejected the argument based on the so-called tyranny of a representative union or its motives in taking the action it may choose to take in any proceedings after it appears on the ground that it has no relevance as the intention of the legislature is perfectly clear from the provisions of the Act. After examining the entire scheme contained in Sections 27-A, 32 and 33, the Court ruled as under:

There can therefore be no escape from that conclusion that the Act plainly intends that where the representative union appears in any proceeding under the Act even though that proceeding might have commenced by an employee u/s 42(4) of the Act, the representative union alone can represent the employee and the employee cannot appear or act in such proceeding.

17. Same position was reiterated by the Supreme Court in *Textile Labour Association, Bhadra Ahmedabad Vs. Ahmedabad Mill Owners Association, Ahmedabad*, .

18. In view of this legal position settled by the decisions of the Supreme Court about the fact of the scheme contained in Chapter V of the BIR Act and its constitutional validity, we are afraid that these contentions would not be open to the petitioners. The learned Advocates for the petitioners having realised this difficult legal situation facing them made a strenuous effort to persuade us that having regard to the concept of equality before law and the fundamental right as

to liberty having acquired new dimensions in view of the decisions of the Supreme Court, particularly in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , this Court must examine as to whether these provisions can stand the scrutiny of the challenge as to their constitutional validity as contended by the petitioners. We have, therefore, permitted them to elaborate their contentions and examine them whether they are well founded.

Re: Contention No. 1:

19. It was urged on behalf of the petitioners that Section 2(3) of the BIR Act inasmuch as it has made the Act applicable to those industries in the areas in which the Bombay Industrial Disputes Act was in force immediately before the commencement of the BIR Act and it excludes the banking companies from the purview of the BIR Act is discriminatory and violative of Article 14 of the Constitution since there is no reasonable nexus between the classification of banking companies and non-banking companies with the object of the BIR Act which is avowedly to provide for the relations of employer and employees and consequently, therefore, maintenance of industrial peace. It was further urged that Section 2(4) of the BIR Act also suffers from the same infirmity since the power of the State Government to apply the provisions "of the Act to all or any of the industries is uncanalised, unfettered and arbitrary and, therefore, liable to be struck down.

20. On behalf of the respondents, this contention is sought to be repelled in three fold manner. In the first place, it was urged that since the Bombay Industrial Relations Act is a pre-Constitution legislation, it is not open to any challenge on the ground of it being ultra vires the Constitution. Secondly, it was urged that it is a conditional legislation and, therefore, beyond the pale of challenge under Articles 14 and 19 of the Constitution. Thirdly, there is a clear guideline not only in the BIR Act but its precursors namely Bombay Trade Disputes Conciliation Act, 1934 as well as the Bombay Industrial Disputes Act, 1938 which enjoins that the power is neither arbitrary, nor unfettered.

21. We need not go into the two larger questions which have been canvassed on behalf of the respondents that the BIR Act being pre-constitutional measure and being a conditional legislation, it is beyond the pale of challenge of it being violative of any provisions of the Constitution. We may, therefore, examine as to whether the petitioners have successfully able to make out that the power is unfettered and arbitrary.

22. The first limb of the contention of the petitioners that Section 2(3) in so far as it discriminates between banking and non-banking companies in the matter of application of the BIR Act, it violates Article 14. This contention is clearly unsustainable in view of the decision of the Supreme Court in *Joseph Kuruvilla Vellukunnel Vs. The Reserve Bank of India and Others*, where in the context of a similar challenge as to the validity of Section 38(1) and 3(b)(iii) of the Banking Companies Act, 1949 which made the Reserve Bank of India the sole Judge to

decide about the fact of the prejudicial conduct of the affairs of a banking company and leaving no option to the Court to pass an order of winding up, if it is sought for by the Reserve Bank of India, discriminated between the banking companies and non-banking companies and therefore violative of Article 14, was negatived. The Supreme Court ruled that a wide difference existed between banking companies and non-banking companies, and there is need for special laws dealing with banking companies. It is held that there being a very clear cut and valid classification, the different procedure provided for in Sections 38(1) and 3(b)(iii) cannot be said to be discriminatory, because it is based on differences which are related to the end sought to be achieved. We are, therefore, of the opinion that since the Legislature thought that banking companies should be excluded from the purview of Section 2(3), no exception can be taken to it on the ground of Article 14 since the ordinary procedure applicable in the matter of governing industrial relations between employer and employees in non-banking companies may not be suitable for the purposes of governing the industrial relations in banking companies. The first limb of the contention, therefore, deserves to be rejected.

23. The second limb of the contention that the power contained in Section 2(4) of the BIR Act is uncanalised and, therefore, arbitrary also has not impressed us. In *Firm Mystery Rajibhai Savjibhai and Bros. and Another Vs. State of Gujarat and Others*, the validity of Section 85 of the Factories Act was challenged on the ground that the power invested in the State Government to extend the beneficial provisions of the Act to persons engaged in industrial occupations in the light of special circumstances of a particular industry, locality or establishment, is unguided, and uncanalised and, therefore, violative of Article 14 of the Constitution of India. Rejecting this contention, the Division Bench of this Court consisting of P. N. Bhagwati and N. G. Shelat, JJ., (as they then were) held that the power of delegation is a constituent element of the legislative power as, a whole and in modern times when the Legislatures enact laws to meet the challenge of the complex socio-economic problems, they often find it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for carrying out the policy laid down by their Acts. The Legislature cannot delegate its essential legislative functions in any case and it must lay down the legislative policy and principle and must afford guidance for carrying out that policy before it delegates its subsidiary powers in that behalf. The Division Bench further held that in dealing with the question as to the vires of any statute on the ground of excessive delegation it is necessary to inquire whether the impugned delegation involves the delegation of an essential legislative function of power or whether the Legislature has enunciated its policy and principle and delegated to the subordinate authority accessory or subordinate powers for the purpose of working out the details within the framework of that policy and principle, and the delegation would not be excessive if there is no delegation of essential legislative function (vide: *Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others*, . The Division Bench,

therefore, negated the challenge to the validity of Section 85 following the decision of the Supreme Court in *Bhikuse Yamasa Kshatriya (P) Ltd., and Another Vs. Union of India (UOI) and Another*, : (1963)ILLJ270SC .

24. In *B.Y. Kshatriya's* case (supra), the Supreme Court was concerned with the validity of this very Section 85 of the Factories Act. The Supreme Court noted that the said section permits selective application of the beneficial provisions of the Act to workers not covered thereby, and the power is conferred to carry out effectively the purpose of the Act, and to an authority which has the means at its command for making the requisite enquiries for ascertaining whether extension of the benefits is in the interest of the workers and the public generally, demanded, and that such a provision cannot be regarded as discriminatory.

25. In *Bhikusa Yamasa Kahatriya Vs. Sangamner Akola Taluka Bidi Kamgar Union*, , the validity of the notification issued u/s 3(3)(iv) of the Minimum Wages Act, 1948 fixing the minimum wages for Bidi workers was, inter alia, challenged as violative of Article 14 of the Constitution. Rejecting this contention, the Court held that by entrusting authority to the appropriate Government to determine the minimum wages for any industry in any locality or generally, the legislature has not divested itself of its authority, nor has it conferred uncontrolled power upon the State Government. It is further held that the power conferred is subordinate and accessory, for carrying out the purposes and the policy of the Act. What has been really entrusted to the State Government is not the essential legislative power but incidental function of making a distinction having regard to the special circumstances prevailing in different localities in the matter of fixation of rates of minimum wages. It is held that selective application of a law according to the exigencies where it is sanctioned, ordinarily results in permissible classification and Article 14 forbids class legislation but does not prohibit reasonable classification for the purpose of legislation. Even if the statute itself does not make a classification for purposes of applying its provision and leaves it to a responsible body to select and classify persons, objects, transactions, localities or things for special treatment, and sets out the policy or principles for its guidance in the exercise of its authority in the matter of selection, statute will not be struck down as infringing Article 14 of the Constitution (see : *Kathi Raning Rawat Vs. The State of Saurashtra*, .

26. In *Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another*, , discretionary power of the State Government to select one of the two procedures from amongst those prescribed u/s 5(1)(a) of the Minimum Wages Act for collecting the data was challenged as uncanalised and arbitrary. Negating this contention, the Supreme Court held that power u/s 5(1) is given to the State Government and not to any petty official and the State Government can be trusted to exercise that power to further the purposes of the Act. It is held that it is not the law that the guidance for the exercise of a power can be gathered from the circumstances that led to the enactment of the law in question, i.e. the mischief that was intended to be remedied, the Preamble to the

Act or even from the scheme of the Act.:

27. In *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, the power conferred on the appropriate Government to exempt an establishment or a class of establishments from the operation of the Payment of Bonus Act, 1965 u/s 36 thereof was challenged as uncanalised and arbitrary power. Negating this contention the Court held that that power conferment did not amount to delegation of legislative authority but amounted to conditional legislation. It is axiomatic to say that it is for the Court to hold upon a fair, generous and liberal construction of a statute, whether the legislature exceeded such limits in delegating the working out of details to the executive or any other agency. The Court should not by the envisaged liberal approach go to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on executive authorities but to keep the balance (see: *Devi Das v. State of Punjab* AIR 1967 SC 1897).

28. It is settled on principle that there is a presumption in favour of the constitutionality of an enactment and the burden is upon the person challenging the validity to show that there has been a clear violation of the constitutional guarantee, and that it must be presumed that the legislature understands and correctly appreciates the need of its own people that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds, and further that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest : see, *Moti Das Vs. S.P. Sahi, The Special Officer In Charge of Hindu Religious Trusts and Others*, and *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . It is in the light of this settled legal position that we have to examine as to whether the petitioners have been able to establish that there has been a clear violation of the constitutional guarantee contained in Article 14 of the Constitution by the impugned provisions in Sections 2(3) and (4).

29. It is no doubt true that the BIR Act does not make a classification of industries or undertakings to which the Act applies and it has been left to the discretion of the Government to apply any of the provisions of the BIR Act to all or any of the industries whether generally or any local area as may be specified in such notification under the said sub-section. The grievance of the petitioners is that this is an uncontrolled, unfettered and unguided discretionary power and, therefore, clearly violative of Article 14. We are unable to agree with this criticism since it cannot be said that the discretion is uncontrolled. The preamble clearly indicates that the purpose of the Act is for regulating the relations of employers and employees, and for settlement of industrial disputes. The BIR Act is envisaged to encourage more and more approved unions in organised industries by investing the approved unions with substantial privileges and also by imposing corresponding obligations on such unions so as to maintain industrial peace in the organised and vital sectors of industries. It also aims at developing trade union activities on sound lines by entitling registered trade

unions to act as representatives of employees in the proceedings under the BIR Act so that the trade union workers and the leaders may attain maturity and conduct their affairs not merely for the interest of workers but also for the industry and nation at large. The BIR Act is designed to evolve collective bargaining methods in established industries so that the disputes between the workers and the employers in the unit in such industrial sector assume form of collective disputes and resolve by the method of collective bargaining. The BIR Act, therefore, cannot be made applicable to all the industries irrespective of the standing of the industries, the development thereof, the financial capacity, the competence of the management therein and the strength and experience of the labour unions. In the very nature of things, therefore, the selection of industries or undertakings and the time for the application of the Act or some of the provisions thereof must be left to the Government since it is the Government which is in better know of these specified particulars and other relevant circumstances as to whether the application of the BIR Act or some of its provisions would be in the interest of the industrial peace and, therefore, its development in the State. We should remind ourselves that precursor of the BIR Act was the Bombay Industrial Disputes Act of 1938 and the same was made applicable to cotton industry throughout the Province of Bombay by various notifications issued in the year 1939 under the Act by the then Provincial Government. The Bombay Act of 1938 was never entirely repealed and, therefore, when the Bombay Industrial Relations Act, 1946 came into force on 29th September, 1947, the Bombay Act of 1938 was applicable to the textile industry and consequently under Sub-section (2) (3) of the Act, the BIR Act became applicable to the textile industry and did not require a fresh notification u/s 2(4) of the Act (see: Ahmedabad Millowners' Association and Another Vs. I.G. Thakore, President and Others, . This fact clearly indicates that the Government has considered that the textile industry is the oldest industry having financial capacity and potential and also responsible and matured trade union leadership, and the strength of trade union working therein was such that this Act had been made applicable as back as 1938 and, therefore, it cannot be said on that ground that since it is applicable to the textile industry, the discrimination is practised upon. We do not think that the second limb of the contention that Section 2(4) invests unguided and unfettered discretionary power in the Government so as to be violative of Article 14 of the Constitution, is well-founded.

30. Our attention has been invited to the decision of the Division Bench of Madhya Pradesh High Court in J.B. Mangaram and Co. Vs. State of Madhya Pradesh, where notification applying provisions of the BIR Act, 1946 to biscuit and confectionery industries in Madhya Bharat employing more than 100 workers in exercise of its powers u/s 2(4) of the Bombay Industrial Relations Act, 1946, was sought to be impugned as violative of the constitutional mandate contained in Article 14. Rejecting the challenge, the Division Bench ruled that in view of the policy of the Act, a classification based on the number of employees had a reasonable relation to "the object sought to be achieved by the statute, and,

therefore, it did not bring about the unreasonable and arbitrary classification between such industries and those employing less than 100 workers. Consequently, the notification was held to be valid. Before the Division Bench, this very contention was urged that since it was left to the discretion of the Government to apply all or any of the provisions of the BIR Act to all or any of the industries by issuing a notification u/s 2(4), it was uncontrolled inasmuch as no guideline was to be found in the section. Rejecting this contention, the Division Bench held that this discretion was not uncontrolled and the statute itself indicated with sufficient clarity the policy or the principle for the guidance of the Government in the matter of exercise of the discretion. The Division Bench considered the preamble and the Scheme of the Act and the other provisions thereof, and thereafter ruled as under:

...The various provisions of the Act abundantly show that for its applicability to any industry or undertaking it is fundamental that the labour working therein should be of sufficient strength organised, and able to act through its own union.

The Act cannot be applied to all industries and undertakings irrespective of the strength and the state of labour therein. It would be altogether unworkable if applied to an undertaking employing a handful of labourers with no organisation of their own....

It varies from industry to industry, undertaking to undertaking, from area to area and from time to time. It was, therefore, clearly impossible for the Legislature to make the Act applicable to all industries and undertakings from the very time of its enactment or to provide for the application of the Act to a specific industry or to an industry at a specific time anticipating the state of labour and events.

The observation of the Division Bench thereafter is illuminative which reads as under:

The selection of an industry or undertaking and the time for the application of the Act to it had therefore to be left to the Government. This delegation of authority, however, is not unbridled. The executive action must conform to the conditions and strength of labour in the undertaking or industry to which the Act is intended to be applied. For the applicability of the Act to an industry or an undertaking it is essential that the labour employed therein is of sufficient strength and organised....

... .The need of regulating the relations of employers and employees and settlement of disputes on collective basis is clearest when the number of labourers is large and the labour is organised. The degree of need depends on the number of labourers and their organisation....

We are in respectful agreement with the reasoning given and conclusion reached by the Division Bench. Re : Contention No. 2:

31. This contention is to be set out for merely rejecting it We do not think that this power of the Government to apply the provisions of the BIR Act to any

industry is violative of Article 19(1)(c) of the Constitution. It is merely, in our opinion, regulatory and not prohibitory. The application of the BIR Act to a given industry or a class of industries would certainly result in reflecting the rights of individual workers to be represented by the representatives other than those of representative union. It cannot be said that the fundamental right to associate is an absolute right which cannot be restricted. The provisions which restrict the right of representation of individual workers in cases where there is a "representative union in an industry is absolutely necessary in the interest of public order since, in the ultimate analysis, these provisions are designed for ensuring industrial peace, by seeking to resolve industrial disputes through industrial arbitration, and adjudication between management and workmen represented through the representative union and thereby to curb the proliferation of mushroom trade unions which will jeopardize the industrial peace and consequently the public order.

32. In *Raja Kulkarni v. State of Bombay* AIR 1954 SC 73, the Supreme Court has rejected precisely this contention that the Act in so far as it invests the representative union to exclude individual workmen from participation in industrial proceedings even where their individual rights are prejudicially affected is violative of Article 19(1)(c) of the Constitution. The contention, therefore, stands rejected.

Re: Contentions Nos. 3 and 4:

33. It has been urged that the impugned provisions in so far as they deprive a worker not being a member of a representative union of personal liberty without fair, just and reasonable procedure established by law by denying him participation in proceedings to decide whether his absence from work in a given situation constitutes illegal strike the declaration in respect of which may entail serious consequences for him, is bad in law and void as it infringes the right of liberty enshrined under Article 21 of the Constitution. It was argued that the duty to act fairly must be implied on the part of the representative union otherwise the right to exclusive representation violates Article 21 of the Constitution. Another facet of the same contention was sought to be emphasised that if the right to fair representation is not prescribed, or read in the provisions, the impugned provisions would violate Article 21 of the Constitution. Article 21, argued the learned Advocates for the petitioners, must be so interpreted as to avoid overlapping of Article 19. The procedure contemplated by Article 21, it was urged, must bear reasonableness in order to be in conformity with Article 14, since, if Article 21 has to stand the test of Article 19, it must at hypothesis, also stand the test of Article 14. The procedure contemplated by Article 21 must be just and fair and not arbitrary or oppressive, otherwise, it would be no procedure at all. *Audi alteram partem* is an essential element of any procedure established by law, and if in a given case the representatives of workmen act in a manner which is prejudicial to their rights or their well being ensured by living wages including the right of bonus, the right to continue in the employment etc., the

workman must have a right to change his representative and to appear either in person or through another representative of his choice. In so far as the impugned provisions provide for a total prohibition on such rights of workers, particularly those who are not members of the representative union, even where the representative union has acted in an unfair or prejudicial manner or from partisan view point, so as to secure larger membership, they must be held to be violative of Article 21. The conferment of exclusive right of representation in representative union without any checks and safeguards is clearly arbitrary, and if right to job, which is a part of the property, is taken away by such prohibitory kind of provisions, they must be held to be ultra vires Articles 14 and 21 of the Constitution.

34. On behalf of the respondents, this contention is sought to be repelled by the learned Advocates on the ground that the entire contention is based on a wrong premise, namely, that individual workman is a party to such proceedings. In submission of the learned Advocates for the respondents, if the proceedings are of a representative type, and the proceedings under the BIR Act, particularly where the representative union has been given exclusive right to appear in industrial proceedings, except in case of dismissal etc., an individual workman is on matter of principle or authority not a party to the proceedings. In other words, it is a collective dispute and therefore no grievance can be made by an individual workman even if rights of a few individual workmen irrespective of the fact whether they are members or not, are affected. No exception can also be taken on the ground that the provisions are unfair or that the representative union is acting in a mala fide manner. The principle of natural justice, namely of right of individual hearing can be excluded under certain circumstances and, therefore, it cannot be said that the procedure is arbitrary. The challenge on the ground of violation of Article 21 in submission of the learned Advocates for the respondents is not well-founded at all since, if challenge on the basis of Article 14 or Article 19 is negatived, this challenge on Article 21 cannot be pressed into service.

35. In context of the failure of the Union Government to furnish reasons for its decision to impound passport in the interest of general public, the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, explained the width of the fundamental right of liberty under Article 21 of the Constitution. Bhagwati, J., speaking for the Court, ruled that it is not a valid argument to say that expression "personal liberty" in Article 21 must be so interpreted as to avoid over-lapping between that Article and Article 19(1). The expression "personal liberty" in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19. If a law depriving a person of personal liberty and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, ex hypothesi it must also be liable to be

tested with reference to Article 14. The Court, therefore, concluded that since the principle of reasonableness is an essential element of equality and consequently arbitrariness is antithesis of the rule of equality, the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. The procedure must, therefore, be right, just and fair and not arbitrary, fanciful or oppressive: otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied. The Court further ruled that the Common Law will supply the omission of the legislature in not providing an opportunity of hearing in a given statute since over the years the principle of natural justice has grown into a widely pervasive rule affecting a large number of administrative actions. The court must, therefore, always inquire whether fairness in action demands in a given situation that an opportunity to be heard should be afforded to persons affected. Justice Bhagwati, after referring to the earlier decisions of the Supreme Court in *Kharak Singh Vs. The State of U.P. and Others*, *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, and *Haradhan Saha Vs. The State of West Bengal and Others*, summed up the position as under:

54. ...It is indeed difficult to see on what principle we can refuse to give its plain natural meaning to the expression "personal liberty" as used in Article 21 and read it in a narrow and restricted sense so as to exclude those attributes of personal liberty which are specifically dealt with in Article 19. We do not think that this would be a correct way of interpreting the provisions of the Constitution conferring fundamental rights. The attempt of the Court should be to expand the reach and ambit of the fundamental rights rather than attenuate their meaning and content by a process of judicial construction. The wave length for comprehending the scope and ambit of the fundamental rights has been set by this Court in *R.C. Cooper's* case and our approach in the interpretation of the fundamental rights must now be in tune with this wave length. We may point out even at the cost of repetition that this Court has said in so many terms in *R.C. Cooper's* case that each freedom has different dimensions and there may be overlapping between different fundamental rights and therefore it is not a valid argument to say that the expression "personal liberty" in Article 21 must be so interpreted as to avoid overlapping between that Article and Article 19(1). The expression "personal liberty" in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19....

Justice Bhagwati further elaborated the inter-relationship between Articles 14 and 19 on one hand and Article 21 on the other. In that connection he referred to the majority view in *R.C. Cooper's* case (supra), and concluded that the earlier view of the Supreme Court in *A.K. Gopalan Vs. The State of Madras*, enumerating doctrine of exclusivity in the sense that when certain articles in the Constitution exclusively deal with specific fundamental rights, no recourse can be had to fundamental right conferred by another Article if the requirement of the former Article dealing with a particular fundamental right in question is satisfied, was

seriously questioned in R.C. Cooper's case (supra), and it was over-ruled by the majority of the Full Court. In Shambhu Nath Sarkar's case (supra). Justice Shelat explained this position clearly by stating that though R.C. Cooper's case (supra) dealt with inter-relationship of Article 19 and Article 31, the basic approach to construing the fundamental rights guaranteed in different provisions of the Constitution adopted in this case held the major premise of the majority in A. K. Gopalan's case (supra) to be incorrect. Bhagwati J. succinctly, therefore, summarised the legal position as under:

55.... the law must therefore now be taken to be well settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of "personal liberty" and there is consequently no infringement of the fundamental right conferred by Article 21, such law, in so far as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that Article. This proposition can no longer be disputed after the decisions in Haradhan Saha Vs. The State of West Bengal and Others, Shambhu Nath Sarkar's case and Haradhan Saha's case . Now, if a law depriving a person of "personal liberty" and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, ex hypothesi it must be liable to be tested with reference to Article 14....

36. In view of the clear legal position we must reject the contention urged on behalf of the respondents that if once the provisions under challenge satisfy the test of Article 14, no further scrutiny from the angle of Article 21 is competent. The pertinent question to which we have, therefore, to address is, whether it can be said that the procedure prescribed in the impugned provisions conferring exclusive right to representation on representative union is not right, just and fair or that it is arbitrary, fanciful or oppressive. It may be advantageous, therefore, to refer as to how the Supreme Court looked in Maneka Gandhi's case (supra), at the power of the Government to impound a passport under the Passports Act, 1967. Bhagwati, J., referred to the decision in Wiseman v. Borneman 1971 AC 297 and quoted the classic passage from the speech of learned Law Lord which reads as under:

that the conception of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part of the philosophy of the law. We often speak of the rules of natural justice. But there is nothing rigid or mechanical about them. What they comprehend has been analysed and described in many authorities. But any analysis must bring into relief rather spirit and their inspiration than any precision of definition of precision as to application. We do not search for prescriptions which will lay down exactly what must, in various divergent situations, be done. The principles and procedure are to be applied which in any particular situation or set of circumstances, are right and just and fair. Natural justice, it has been said, is

only "fair play in action". Nor do we wait for directions from Parliament. The Common Law has abundant riches; there may we find what Byles., called "the justice of the Common Law". Thus, the soul of natural justice is "fair play in action" and that is why it has received the widest recognition throughout the democratic world. In the United States, the right to an administrative hearing is regarded essential requirement of fundamental fairness. And in England too it has been held that "fair play in action" demands that before any prejudicial or adverse action is taken against a person, he must be given an opportunity to be heard. The rule was stated by Lord Denning M.R. in these terms in *Schmidt v. Seey. of State for Home Affairs* (1969)2 Ch.D. 149 "Where a public officer has power to deprive a person of his liberty or his property, the general principle is that it has not to be done without his being given an opportunity of being heard and of making representations on his own behalf...."

37. The Supreme Court, after referring to the decision in *Rex v. Electricity Commissioners* (1924) 1 K.B. 171 and to its earlier decisions in *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, and *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, ruled that the net effect of these and other decisions is that the duty to act judicially need not be super-added but it may be spelt out from the nature of the power conferred, the manner of exercising it and its impact on the rights of the person affected, and where it is found to exist, the rules of natural justice would be attracted. The Supreme Court thereafter examined the minimum content of natural justice as no one shall be a judge in his own cause and no decision shall be given ex parte without affording him a reasonable opportunity. The Court having conceded that this right of hearing may be excluded where having regard to the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions and fairness in action does not rule out its exclusion in given circumstances, reminded the Courts and the authorities that this is a rule of a vital importance in the field of administrative law and must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands, and since it is a wholesome rule designed to secure the rule of law, the Court should not be too ready to eschew it in its application to a given case. Bhagwati, J., further emphasised in that connection that the Court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case, though the audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications, The observation made by Bhagwati, J. at page 629-30 is very instructive which is in the following terms:

63. ...The core of it must however remain, namely that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker LJ emphasised in *Russell v. Duke of Norfolk* (1949) 1 All ER 109 that "whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case". What opportunity may be regarded as reasonable would necessarily depend on the practical

necessities of the situation. It may be a sophisticated full-fledged hearing or it may be a hearing which is very brief and minimal : it may be a hearing prior to the decision or it may even be post-decisional remedial hearing. The audi alteram partem rule is sufficiently flexible to permit modifications and variations to suit the exigencies of myriad kinds of situations which may arise...

33. The Supreme Court thereafter ruled in the particular context before it that audi alteram partem rule was not excluded merely because the power to impound passport may be frustrated if prior notice and hearing were to be given to the person concerned before impounding his passport though the passport authority may proceed to impound the passport without giving any prior opportunity to person concerned to be heard but as soon as the order impounding the passport is made, the opportunity of hearing remedial in aim should be given to him so that he may present his case and controvert all that to the passport authority and point out why his passport should not be impounded. The Supreme Court, speaking through Bhagwati J. thought it fit to read down the particular provision conferring the power to impound passport as above, and held that if such a provision were held to be incorporated in the Passports Act by necessary implications, it must be a procedure prescribed by the Act for impounding a passport which would be right, fair and just and it would not suffer from the vice of arbitrariness or unreasonableness. It is no doubt true that the workmen are represented in a given industrial dispute by the representative union. It also cannot be gainsaid that the industrial dispute is by and large in nature of a collective dispute. We cannot afford to ignore the wholesome purpose underlying the impugned provisions which, as Supreme Court has observed in Santuram Khudai Vs. Kimatrai Printers and Processors Pvt. Ltd. and Others, , leaves no room for doubt that the Legislature has clothed the representative union with plenary power to appear or act on behalf of the employees in any proceedings under the Act and consequently has deprived the individual employees or workmen of the right to appear or act in any proceeding under the Act where the representative union enters appearance. This is with a view to further the avowed policy of preventing exploitation of the workers appearing individually and augmenting their bargaining power. It is also settled legal position that individual employee does not get any right to enter appearance even on the ground that the union is not acting for and on behalf of the employees but is acting mala fide and against the interest of the employees. See : Santuram's case (supra). The procedure envisaged in the impugned provisions, and more particularly Chapter V of the BIR Act cannot be impugned on the ground that it does not provide by and large fair and just procedure and therefore in all cases where individual workmen are aggrieved by the stand taken by the representative trade union, they would be entitled as a matter of course to the permission to appear in such proceedings. It is no doubt expected of the representative unions to represent the case of the workers irrespective of the fact that some or most of them are their members or not in a just, fair and effective manner. It is ordinarily difficult to conceive a situation where the cause

of the workmen is allowed to suffer by the intentional and wilful default of the Union, though the question of the bona fides of the union in conducting the cause in a particular manner is not sufficient to entitle a workman or a number of workmen prejudicially affected by such conduct to seek individual appearance as a matter of right. The remedy for the aggrieved workmen where a representative union acts in a manner prejudicial to their interest is to invoke the aid of Registrar, inter alia, for cancelling the registration of the "union. (See: *Sunturam Khudai's case* (supra). The grievance of the petitioners of Special Civil Application No. 1424/79 and of Special Civil Application No. 850/79 that the industrial proceedings out of which these two applications have arisen related to a situation where the employer applied for a declaration that the action of the workmen amounted to illegal strike, inasmuch as they insisted for enjoying the recess as was permissible before the agreement in question, as was the case in Special Civil Application No. 1429 of 1979, or refusal to carry out the assignment of work in pursuance of an agreement between the employer and the representative union, as was the case in Special Civil Application No. 850 of 1979, and, therefore, affected the individual workman involved in the situation whose case was not represented by the Union at all and the declaration that was granted by the Labour Court which is under challenge in Special Civil Application No. 1424 of 1979 or that would be granted in Special Civil Application No. 850/1979, would expose them to certain grave consequences including their liability of being prosecuted besides their immediate dismissal from the service. The petitioners' counsel urged that if in such an extraordinary situation fraught with such grave and serious consequences affecting personal liberty of these petitioners where the Union has refused to act effectively, the Labour Court ought to have allowed these aggrieved workmen to represent their cause even if from the point of the representative union, their conduct amounted to in discipline or did not come upto the norms of conduct expected of the members of such union. They tried to distinguish *Santuram Khudai's case* (supra) on the ground that these are not the cases where the unions have acted in a mala fide manner but these are cases where the unions have not acted at all for the reasons best known to them. They posed a very serious and important question before the Court as to whether in such situations where the Union refuses to represent the causes of the workmen and allows the issue to be prejudicially determined against them without any opportunity being given to such workers, it is a clear case of failure to observe the principles of natural justice and fair play. In their submission, this Court must interfere in such situation because the principles of natural justice have been violated. They further urged that if individual representation is denied to such workers in such situation on the sole ground that the impugned provisions taken together impose an absolute ban on the appearance of an individual employee because the representative union has chosen to appear or to act as a representative of the employees, the procedure is violative of the elementary principles of natural justice and, therefore, no procedure at all as laid down by the Supreme Court in *Maneka Gandhi's case* (supra). On the other hand on behalf of the respondent-companies as well as the

representative trade unions which have been also joined as party-respondents in these applications, it was urged that if such a provision banning the individual appearance in cases where the representative union enter appearance or chooses to act as a representative union, is a common provision to be found in the relevant legislation in different countries because in the ultimate analysis it is designed to augment the bargaining capacity of the workers who, as individual workers, would not be able to resist the resourceful employers and also because it will achieve the purpose of one union for one industry. Our attention has been invited to sections 10 and 18 of the Industrial Relations and Disputes Investigation Act, 1948 as in force in Canada. Section 10 invests exclusive authority in a certified trade union to bargain collectively on behalf of employees in the unit and to bind them by a collective agreement until the certification of the trade union in respect of employees in the unit is revoked. Similarly, Section 18 empowers a certified bargaining agent to enter into collective agreement. On behalf of the representative trade union reliance was placed on the decision in *Corbett v. Canadian National Printing Trades Union* (1943) 4 Dominion Law Report, 441 which held that an agreement between a trade union and an employer though discriminated against certain members, was lawful since it was entered into by lawful means causing no damage and was actuated solely for the protection of the members' interests. Similarly Section 9 of the National Labour Relations Act, 1935 authorises the representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes as exclusive representatives of all the employees for purposes of collective bargaining in respect of the rates of pay, wages, hours of employment, or other conditions of employment: provided, however, any individual employee or a group of employees shall have a right at any time to present grievances to their employer. By the Commonwealth Conciliation and Arbitration Act, 1926, u/s 62, an association which is deemed to be an organisation for the purposes of the Act is entitled to submit to the Court any industrial dispute in which it is interested and to be represented before the Court in the hearing and determination of such industrial dispute u/s 65 thereof. We do appreciate that the provisions akin to the impugned provisions are incorporated with certain modifications in the labour laws of the different countries since it is well recognised that group interests are best served by vesting the power to initiate and settle industrial proceedings and claims in the representative unions. However, it cannot be denied that there are serious consequences and inherent dangers in investing the representative trade unions with unfettered, unguided and untrammelled power of initiation and conduct of such proceedings. In an illuminating article of right under the labour agreement published in *Harvard Law Review*, Vol. 69 by Archibald Cox the then professor of law. Harvard Law School, p. 601, the following observations are instructive:

Protection available to the Individual-From the viewpoint of the individual employee there are grave risks in giving the bargaining representative untrammelled control over the prosecution and "compromise of grievances. The

individual has a strong personal and vested interest in a claim to compensation or damages. Grievance handling offers the union opportunities for subtle discriminations which do not exist in the negotiation of general rules for the future. Loyal unionists may have their grievances pressed promptly to a successful conclusion while workers who have not joined the union or who opposed the business agent in the last union election find it harder to obtain favourable adjustments. The temptation to engage in "horse trading" is not inconsiderable....

The individual can be granted Maximum legal protection by a rule of law giving him the sole right to compromise or prosecute a claim to damages for breach of contract regardless of the intent of the company and union in writing the agreement. I find five weaknesses in this solution. First, it disregards established collective bargaining practices - a step which can be justified only by strong necessity. Second, it exposes the employee to many of the same economic pressures which put the individual at a disadvantage in bargaining about prospective conditions of employment....

A second possible solution is to follow the Hughes Tool dictum and hold that the assent of both the individual employee and the union is essential to the binding adjustment of a claim of contract violation. This view would give the individual the maximum protection not only against discriminatory or improvident compromises by the union but also against his own weakness in dealing with the employer. It would permit the union to carry forward any, grievance affecting a wider group of employees. Its chief fault is that it treats issues which arise in the administration of a contract as if there were always a "right" interpretation to be divined from the instrument. The allocation of power to settle is rarely important unless the individual is at odds with the union...

A third alternative is to develop protection for the individual through evolution and implementation of the duty of fair representation. In *Steels v. Louisville & N.R.R.* 323 U.S.192 (1944) Chief Justice Stone held that the statutory bargaining representative has the duty "to exercise fairly the power conferred upon it on behalf of all those for whom it acts, without hostile discrimination against them"....

Obviously there are no ready made standards of fairness. The courts may look to constitutional standards, as the Supreme Court did in dealing with racial discrimination, and to legislative policy, as the Fifth Circuit did in requiring the majority representative to handle grievances for non union as well as union employees in the bargaining unit. Beyond this, however, guides must be found in the industrial world and the moral precepts of the community. The problem is one of creating law; it is no more nor less difficult than in situations where the common law judge is required to particularise some general rule of reasonableness. Plainly, the duty of fair representation is violated when a union discriminates between employees in the bargaining unit because of union membership or activities, union politics, the exercise of political rights, or sheer

favouritism.

39. We do appreciate the criticism levelled at the system of collective bargaining incorporated in the exclusive right of representation for representative trade union under the impugned sections, but we have to judge the validity of these sections in the perspective of our Constitutional mandate contained, particularly in Articles 14, 19 and 21. The challenge on the ground of it being violative of Article 14, inasmuch as it is discriminatory or under Article 19 is not capable of being elaborated any further in view of the settled legal position. The question about it being violative of Article 21 is raised for the first time and particularly in the context of the perspective of that Article as elaborated in the Supreme Court in *Maneka Gandhi's case* (supra). We must say without any fear of contradiction that by and large it cannot be said that the impugned provisions prescribe a procedure which is no procedure at all inasmuch as they violate the principles of natural justice and fair play. However, in particular situations this question may assume importance as to whether the Labour or Industrial Court would be justified in refusing the right of hearing to aggrieved individual workman on the broad and sole ground of the ban prescribed by the impugned sections. As quoted with approval by Justice Bhagwati, the observation from *Wiseman v. Borneman* (supra), the conception of natural justice should at all stages guide those who discharge judicial functions. There is nothing rigid or mechanical in application thereof. What is imperative for the Court is that it should apply the principles and procedure which are right, just and fair in any particular situation or set of circumstances because, in the ultimate analysis, natural justice is nothing but fair play in action.

40. It is not necessary that the Legislature or for that matter the Parliament must incorporate in express terms this procedure or principle. The Industrial Court or the Labour Court should bear in mind that if in a given situation the conduct of the representative union in representing the workers is such that the causes of the workmen go by default, the Court must not allow the injustice to be perpetrated by deciding the causes of the affected workmen without giving them opportunity of being heard and making representation on their own behalf. This dictum of *Wiseman v. Borneman* has been approved by the Supreme Court in context of Article 21. Bhagwati, J. was at pain to emphasise that the core of the principles of natural justice is that a person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. The person concerned should have a reasonable opportunity of presenting his case. What opportunity may be regarded as reasonable would necessarily depend, as observed by Bhagwati, J., on the practical necessities of the situation. It may be a fullfledged hearing or it may be a hearing which may be very brief and minimal; it may be a hearing prior to the decision or it may be post-decisional remedial hearing.

41. We are of the opinion that the procedure prescribed by the impugned provisions in so far as it invests the exclusive right of representation in the

representative trade union is by and large not ultra vires Article 21 of the Constitution, and it cannot be assailed upon as no procedure at all. However, we must add that in particular situations where the Industrial Courts find that their decisions in matters or on issues which they are called upon to decide are fraught with grave and serious consequences to the workers such as the declaration of a cessation of work as an illegal strike exposing them to not only the penalty of dismissal or removal from the service but also criminal prosecution, and that the representative trade unions appearing or acting on behalf of the workmen do not act in a fair, just and effective manner in representing the causes of such workmen, the Industrial Court or the Labour Court may give an opportunity of hearing to the affected workman or a group of workmen though the content of hearing may be minimum so as to provide an opportunity to the workman or a group of workmen to represent his or their causes effectively. It should be clarified that this right of hearing which the Industrial Court or the Labour Court may think fit to grant in a given situation would not entitle the concerned workman or a group of workmen to apply and insist before the Industrial or Labour Court that he is or they are entitled to be a party and, therefore, should be made a party to the proceedings. We may add here by way of caution that the Industrial or the Labour Court may exercise this right of giving opportunity of hearing to the workers in those rare, exceptional and extraordinary circumstances where such Court feels that denial of the right of hearing to a workman would expose him to such grave and serious consequences that no remedial measures would effectively compensate him after he suffers those consequences. In other words, the Industrial or the Labour Court may sparingly exercise this power in those rare and exceptional cases where it is satisfied that the failure of the representative union to act in a just, fair and effective manner would expose the workman concerned to such grave and serious consequences for which it would not be possible to compensate him by affording any remedial measure.

41. Our attention has been invited to the decision of the Supreme Court in Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal, in context of Section 36 of the Industrial Disputes Act, 1947 entitling the workman who is a party to the dispute for being represented by an officer of the registered trade union of which he is a member, held that the ordinary rule should be that such representation by an officer of the trade union should continue throughout the proceedings in the absence of exceptional circumstances which may justify the Tribunal to permit other representation of the workman concerned. We do not think that this can be pressed in service with force by the petitioners in support of their causes.

42. No other contentions have been urged.

43. The result is that these petitions are dismissed subject to the liberty to the petitioners to move the Labour Court for affording opportunity to them in view of what we have observed above and the Labour Court shall dispose off their

applications if so moved, in light of the observations made in this judgment. Rule in each of these petitions stands discharged accordingly with no order as to costs.