
(2025) 09 BOM CK 0348
In the Bombay High Court
Case No : Writ Petition No. 3326 Of 2025

Shrikrishna Kulkarni

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 19-09-2025

Acts Referred:

Trade Unions Act, 1926 — Section 28(1)(A)

Citation : (2025) 09 BOM CK 0348

Hon'ble Judges : Ashwin D. Bhobe, J; Ravindra V. Ghuge, J

Bench : Division Bench

Advocate : Yogendra Pendse, Pavitra Manesh, P.N. Diwan

Final Decision : Allowed

Judgement

Ravindra V. Ghuge, J

1. The Petitioner Nos. 2, 3 and 4, have instructed the learned Advocate to delete them from the array of the Petitioners. Deletion is permitted on instructions.
2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
3. The Petitioner has put forth prayer clauses (a) and (b), which read as under :
"a. This Hon'ble court be pleased to pass an Order of Writ of Certiorari and call for records and proceedings of Order dated 15/04/2024 and be please to quash and set aside the Order dated 15/04/2024 passed by the Ld. Deputy Registrar, Trade Unions Act, 1926, Nashik Division, Nashik after verifying its legality and propriety.
b. This Hon'ble Court be pleased to pass an Order directing the Deputy Registrar to issue consent certificate as per K form to the Petitioners as per Exhibit E of this Petition."
4. The Petitioner claims to be an Employee of a Company, namely Bosch Ltd., for

more than 10 years. Respondent No. 3 is a Union of Employees, who are working in the said company. The sole Petitioner was also the General Secretary of the Union from 12.2.2020 till 4.2.2023.

5. The Union issued a show cause notice dated 28.11.2023, to the Petitioner, calling upon him to explain as to why he should not be expelled from the Union. The Petitioner replied to the notice on 30.11.2023 asking for 10 days' time since he was practically given 48 hours to respond to the notice. Subsequently, after considering the reply of the Petitioner, the Union terminated his membership by expelling him on 4.12.2023.

6. The Petitioner, therefore, approached Respondent No. 2 invoking Section 28(1-A) of the Trade Unions Act, 1926. Respondent No. 2 Authority, relied upon the Judgment delivered by the Hon'ble Supreme Court in *Borosil Glass Works Ltd. Employees' Union v/s. D.D. Bambode and Others*, (2001) 1 SCC 350. wherein the Hon'ble Supreme Court concluded that a dispute raised by persons who are yet to become members of the Union, would not be covered by Section 28(1-A), and refused to grant the Consent Certificate to the said Employees.

7. We find that the Respondent No. 2 Authority has completely misread the facts of the case appearing in *Borosil Glass Works Ltd. Employees' Union* (supra). In the said case, the Employees had applied for membership of the Appellant Trade Union. The membership was refused. The Respondent Workers approached the Deputy Registrar, Trade Union invoking Section 28(1-A) of the Act. He declined to issue a Consent Certificate.

8. The Bombay High Court interpreted Section 28(1-A) to conclude that even the person who has applied to become a member of a Trade Union, can apply under section 28(1-A) to raise a dispute for refusal of membership. The Hon'ble Supreme Court concluded in paragraphs 6, 7 and 8 as under :

6. The Statement of Objects and Reasons for incorporating Section 28-1A is also relevant. It reads as follows:

"The Indian Trade Unions Act, 1926, provides for the registration of Trade Unions, and in certain respects defines the law relating to registered Trade Unions. The Act, however, does not contain any provision for deciding internal disputes in a registered Trade Union. These disputes, which are at present decided by civil courts take a long time to decide with the result, that pending the decision of the dispute, the work of the registered Trade Union, which cannot function, is paralysed. To tide over this difficulty, it is proposed to take power to members of Trade Unions with the consent of the Registrar of Trade Unions to refer such disputes to the Industrial Court constituted under the Bombay Industrial Relations Act, 1946, and to bar the jurisdiction of civil courts from entertaining such disputes. It is also proposed to empower the Industrial Court to pass interim orders, and its decisions are to be made final and binding on parties."

7. In our view, on a plain reading of Section 28(1A), the interpretation given by

the High Court cannot be sustained. Section 28(1A) has been incorporated to ensure that internal disputes in a trade union get decided. The Section specifically provides that it can be only invoked by a person who has been a member of such registered trade union for a period of not less than 6 months. The words "where there is a dispute as respects whether or not any person is an office-bearer or member of a registered trade union" has to be read along with the words "any member of such registered union for a period not less than six months". A person whose application for membership has not been considered or allowed would not have been a member for six months. It is a cardinal rule of interpretation that if two interpretations are possible, one of which leads to a harmonious reading of the entire provision and another which renders a portion nugatory then the former interpretation has to be accepted. The interpretation given by the High Court leads to the requirement of a person being a member for six months being rendered nugatory. However if it is held that the dispute "as to whether a person is a member or not" is necessarily a dispute in respect of a person who was already a member for a period of not less than six months, but whose membership is being disputed then no portion of the Section gets rendered nugatory. Thus it will have to be held that dispute between persons who are not members and the Union would not be covered by Section 28(1A). Further a dispute between a person who is not yet a member and a union would not be an internal dispute of the union.

8. Under Section 28(1A) the jurisdiction of the Civil Court is barred only in respect of matters which have been referred to an Industrial Court under Section 28(1A). If a dispute does not fall under Section 28(1A) then that dispute can always be taken to a Civil Court. As a dispute whether a person should or should not be admitted as a member is not a dispute falling within Section 28(1A), it would always be open to such persons to approach a Civil Court for resolution of their dispute. Needless to say that if the law permits they may also raise an industrial dispute before the Industrial Court in that behalf.

9. The Hon'ble Supreme Court concluded that when individual workmen were not even the members of a Trade Union and the dispute was only as regards seeking membership of the Union, there was no question of expulsion of any member. It was further held that in such cases, at best, the dispute may lie before the Civil Court.

10. The learned Advocate representing the Union, on the one hand, has vehemently opposed the Petition. On the other hand, on the facts of the case, she submits that the Union has a strong case to defend if eventually the dispute of expulsion of the Petitioner is adjudicated upon by the Industrial Court.

11. The learned AGP also defends the impugned order and submits that an appropriate order may be passed.

12. We have delved upon the facts appearing in the Borosil Glass Works Ltd. Employees' Union (*supra*), which are completely distinct than the facts appearing

in the case in hands. The Union also admits that the order dated 04.12.2023 passed by the Union, has resulted in the expulsion of the Petitioner.

13. In view of the above, this Writ Petition is allowed. The impugned order is quashed and set aside. Respondent No. 2 is directed to issue a Consent Certificate under Section 28(1-A) of the Trade Unions Act, thereby permitting the Petitioner to approach the concerned Industrial Court. Let such consent letter be issued within a period of 15 days from today.

14. Rule is made absolute in the above terms.