

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4602 OF 2015

Ordinance Factory Kamgar Union,
Registration No.1405 dated June 1953
Through its President,
Shri Rajendrakumar Navinchandra Jha,
having its Office at Ordinance Factory
Estate, Bhusawal - 425 203

...PETITIONER

VERSUS

1. The Union of India,
Through its Secretary,
Ministry of Defence, Government of India,
New Delhi 110 001
2. The Director General of Ordnance factories/
Chairman,
Ordnance Factory Board,
10-A Khudiram Bose Road
(Auckland Road),
Kolkata - 700 001
3. The General Manager
Ordnance Factory
Bhusawal 425 203, Maharashtra.
4. Additional General Manager, Ordnance
Factory Bhusawal - 425 203

...RESPONDENTS

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Mr.R.R.Mantri, Advocate holding for Mr.Prasanna
N.Kutti, Advocate for the petitioner.

Mr.Sanjeev B.Deshpande, ASJ for respondent nos.1
to 3.

Mr. Alok M.Sharma, Advocate for respondent no.4.

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**CORAM: S.S.SHINDE
AND
P.R.BORA, JJ.**

Date: 19-6-2015

Date of reserving the
order: 29/4/2015
Date of pronouncing the
order: **19-6-2015**

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PER COURT:

1. The registered trade union, functioning at Ordnance Factory, Bhusaval (respondent no.3), has filed the present petition for quashment of the communications dated 26.2.2015, and 2nd of March, 2015, received to it from respondent nos. 3 and 4. Vide communication dated 26/2/2015, respondent nos. 3 and 4 have intimated to the petitioner Union that all the facilities of recognized union extended to the said Union by the Ordnance factory, Bhusawal, stands suspended / withdrawn with immediate effect till such time the Union takes corrective action to alleviate the anomaly described in the body of the aforesaid letter. Vide communication dated 2.3.2015, respondent nos. 3 and 4 have restrained Shri Rajendrakumar Jha President of the petitioner Union, from entering into or staying in the factory premises / factory estate with immediate effect failing which said Shri Jha is warned that legal actions will be taken against him.

2. There is no dispute that the petitioner is a registered trade union and is recognized since 1956 by the Government of India, Ministry of Defense, and is affiliated to

the All India Defense Employees Federation (AIDEF). It is further not in dispute that one Shri Rajendrakumar Jha is at present President of the said Union. The communication dated 26.2.2015 reveals that the Ordnance Factory Board (OFB), vide its letter dated 19/23/08/A/IR dated 24.2.2015, copy of which was endorsed to General Secretary, AIDEF, Khadki, Pune, had issued following directions:

" that one of the recognized Unions of the Factory, Ordnance Factory Bhusawal Kamgar Union, is having Shri Rajendra Jha, a dismissed employee of the Factory, as President. It has also been intimated that the Union is practicing disruptive IR practices including Dharnas and Hunger Strikes on spurious grounds. The Union has also been insisting for participation of Shri Rajendra Jha in all the dialogues with the Factory management.

02. Shri Rajendra Jha, being a dismissed employee, cannot hold the post of an office Bearer of a recognized Union, as per the Recognition Rules, 1995 and Ministry of Defence directives No.11(5)/2004/D(JCM) dated 07/04/2005. Since the Union has been found in violation of the Govt. directives on the subject, it is hereby directed to suspend/withdraw all the facilities of a recognized Union to Ordnance Factory Bhusawal Kamgar Union, affiliated to AIDEF, with immediate effect, till such time the Union takes corrective action to alleviate the above anomaly"

The aforesaid anomaly was directed to be removed by the petitioner Union and till then, the facilities extended to the recognized Union are suspended.

3. Shri Mantri, learned Counsel appearing for the petitioner Union, submitted that the directions given by the Ordnance Factory Board are patently illegal and against the spirit of the Trade Unions Act, 1926. Learned Counsel, taking us through the provisions of the Trade Unions Act, submitted that the provisions of the Act permit the persons not working in the concerned factory to be the office bearer of the trade union in the factory concerned. Learned Counsel submitted that the respondents are illegally pressurizing the petitioner Union to remove Shri Rajendrakumar Jha from the President-ship of the petitioner union.

4. Shri Deshpande, learned ASJI, opposed the submissions advanced on behalf of the petitioner Union. Learned ASJI submitted that the actions of the respondents are well within the purview of their jurisdiction and in accordance with the relevant Rules. Learned ASGI pointed out the revised Rules for Recognition Of Unions and more particularly, clause 2(a) of the said Rules which provides that the membership of the Union must be confined to workmen employed in the same industry or industries closely allied to or connected with each other. Learned ASGI further pointed out that in the revised recognition Rules, it is stipulated that recognized Union or Unions seeking recognition have to ensure that, none of the office-bearer is a person who is dismissed, removed or discharged from Government service on disciplinary grounds. Learned ASGI further submitted that subsequently, in the

instructions dated 7.4.2005, in para no.3B also it is stipulated that none of the Office-bearers of the Federation should have been a person who is dismissed / removed / discharged from Government service on disciplinary grounds. The respondents have placed on record copies of the instructions dated 26.3.1996 and 7.4.2005. In view of the provisions as above, according to learned ASGI, Shri Rajendra Jha cannot be continued as office bearer of respondent Union since he has been dismissed from the service of the respondents on disciplinary grounds.

5. Learned ASGI further raised preliminary objection for entertaining the writ petition stating that alternate, efficacious remedy is available for the petitioner Union to ventilate its grievance. He brought to our notice the relevant provisions in the Industrial Disputes Act to substantiate his contention that the petitioner Union must have availed the remedy provided under the provisions of the Industrial Disputes Act. Learned ASGI was more persuasive in submitting that this Court shall not invoke extraordinary jurisdiction in favour of the petitioner Union when alternate, efficacious remedy is available. He, therefore, prayed for dismissal of the petition.

6. We have carefully considered the submissions advanced on behalf of the petitioner Union as well as the respondents. We have also gone through documents filed on record and the relevant provisions of law referred during the course of arguments by both the parties. Since the preliminary objection is raised by the respondents as regards to availability of alternate, efficacious remedy for the petitioner Union, we

would like to first deal with the said argument.

7. From the pleadings of the petitioner Union, it is evident that the actions of the respondents complained of by the Petitioner Union fall in the purview of unfair labour practices as enumerated in the Fifth Schedule appended to the Industrial Disputes Act, 1947. The term 'unfair labour practice' is defined in Section 2 of the Industrial Disputes Act, 1947. Sub clause (ra) of Section 2 defines 'unfair labour practice', which means any of the practices specified in the Fifth Schedule. Clause (1) of the Fifth Schedule reads thus:

" UNFAIR LABOUR PRACTICES

1. ON THE PART OF EMPLOYERS AND TRADE UNIONS OF EMPLOYERS:

1) To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say.-

... .."

On perusal of the aforesaid provision, it appears that the allegations made by the petitioner Union that the respondents are pressurizing the Union to remove Shri Rajendrakumar Jha from the Presidentship of the Union can be said to be an interference in the right of Peritioner Union to organize their activities and may, therefore, fall in the realm of unfair labour practices defined in the aforesaid clause.

8. Similarly, our attention was also invited to Second Schedule to the Industrial Disputes Act and, more particularly to clause (4) thereof. As provided in aforesaid clause (4), the matter in respect of withdrawal of any customary concession or privilege, falls within the jurisdiction of the Labour Court. In

the present petition, it is the precise complaint of the petitioner Union that the respondents have threatened to withdraw the concessions and / or privileges being enjoyed by the petitioner Union. Thus, as provided under the Second Schedule, the aforesaid aspect will definitely come within the jurisdiction of the Labour Court.

9. Our attention was also invited by the learned ASGI to the definition of 'appropriate Government' as provided under Section 2(a) of the Industrial Disputes Act, 1947. As per the said definition, in relation to any industrial dispute concerning the authority of the Central Government, the 'appropriate Government' will be the Central Government. There is no dispute that the Bhusaval Ordnance factory is under the control of the Central Government. The definition of 'industrial dispute' is required to be looked into, which is defined in Section 2(k) of the Industrial Disputes Act, which reads thus:

"(2(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labor, of any person;"

10. Section 7 of the Industrial Disputes Act, 1947, provides that the appropriate government may, by notification in the Official Gazette, constitute one or more Labor Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act whereas, Section 7A(1) provides that the appropriate government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes

relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.

11. On consideration of the aforesaid provisions, it apparently appears to us that the dispute raised by the petitioner Union in the present petition can be efficaciously dealt with by the forums provided under the Industrial Disputes Act. We, therefore, uphold the preliminary objection raised by the respondents. In the circumstances, we are not inclined to entertain the present petition under Article 226 of the Constitution of India. The Petitioner Union is, however, at liberty to file appropriate proceedings before appropriate forum as provided under the provisions of Industrial Disputes Act, 1947.

With liberty as above, the petition stands disposed of.

In view of disposal of the petition, Civil Application stands disposed of.

The Petitioner Union may file such proceedings within four weeks from the date of this order. The interim order passed by this Court on 20th April, 2015, shall remain in force till then.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

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