

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7238 OF 2014

Rashtriya Mazdoor Sangh (INTUC) ... Petitioner
Vs.
Chowgule Industries and another ... Respondents

Mr. Nitin Kulkarni for Petitioner.
Mr. Rahul Nerlekar i/b. Mr. T. R. Yadav for Respondent No.1.
Ms Sayli Bhaidkar i/b. Mr. Atul G. Damle for Respondent No.2.

CORAM : R. G. KETKAR, J.
Reserved on: **30TH JANUARY, 2015**
Pronounced on: **TH FEBRUARY, 2015**

ORDER :

Heard Mr. Kulkarni, learned Counsel for petitioner, Mr. Nerlekar, learned Counsel for respondent No.1 and Ms Bhaidkar, learned Counsel for respondent No.2 at length. Rule. The learned Counsel for the respondents waive service. At the request and by consent of the parties, rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner - Rashtriya Mazdoor Sangh (for short 'Mazdoor Sangh') has challenged the judgment and order dated 01.07.2014 passed by the learned Member, Industrial Court, Pune in Application (MRTU) No.23 of 2012. By that order, the Industrial Court cancelled the registration of Mazdoor Sangh as recognized union in pursuance of order dated 24.07.2012 passed in Application (MRTU) No.12 of 2011. It was further directed that the order will take effect on and from 01.08.2014. The facts and circumstances, giving rise to the filing of the present Petition, briefly stated, are as under:

3. Respondent No.2 – Chowgule Industries (P) Limited is a company registered under the Companies Act, 1956 and is engaged in the business of the dealership of Maruti vehicles and gives effective services to its customers of the said vehicles at its show-room as well as service centres situate at Katraj and Ambegaon. Mazdoor Sangh, claiming 100% membership in respondent No.2, filed an application on 19.04.2011 under Section 11 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'Act') for a recognition in respect of the undertaking situate at (a) Taware Colony, Pune-Satara Road, Pune-411 009, (b) Survey No.53, Katraj, Pune-Satara Road, Pune 411 046, and (c) Behind Ashok Leyland Company, Pune-Mumbai Highway, Ambegaon, Pune 411 046. Respondent No.2 contested the application. By order dated 24.07.2012, the Industrial Court was pleased to grant recognition to Mazdoor Sangh.

4. On 22.11.2012, respondent No.1 – Chowgule Industries Kamgar Sanghatana (for short 'Kamgar Sanghatana') was formed. Kamgar Sanghatana filed an application on 18.12.2012 under Section 13 of the Act seeking cancellation of recognition of Mazdoor Sangh on the ground that no notification was issued by the State Government declaring 3 concerns as one unit and the membership of the Mazdoor Sangh has fallen below 30%. Respondent No.2 opposed the application by filing reply dated 16.02.2013. The petitioner also filed its reply opposing the application. Kamgar Sanghatana filed application at exhibit U-2 claiming interim relief of suspension of the rights of Mazdoor Sanghatana before the Industrial Court. By order dated 16.03.2013, the application was rejected.

5. The parties led evidence before the Industrial Court. By the impugned order, the Industrial Court cancelled the recognition on the

ground that recognition granted to Mazdoor Sanghatana by order dated 24.07.2012 was by mistake or misrepresentation and is liable to be cancelled as per Section 13(1)(i) of the Act. It is against this order, Mazdoor Sanghatana has instituted the present Petition.

6. In support of this Petition, Mr. Kulkarni strenuously contended that the Industrial Court committed serious error in interpreting provisions of the Act and in particular, Section 3(3) which defines the expression “concern” and Section 3(15) which defines the expression “undertaking”. He further submitted that Kamgar Sanghatana did not make out case covered by Section 13(1)(i) of the Act. In other words, he submitted that while granting recognition by order dated 24.07.2012 by the Industrial Court, the recognition was not granted under any mistake, misrepresentation or fraud. The application filed by Kamgar Sanghatana was liable to be dismissed. He further submitted that Mazdoor Sanghatana had made application under Section 11 of the Act on 19.04.2011 inter alia contending that it is functioning in the respondent No.2 since 24.09.2010. No other Union was functioning in the respondent No.2. It has requisite membership for the whole of the period of last 6 calendar months immediately preceding date from which the application was made. All the employees are its members. The recognition was, therefore, sought in respect of the undertaking situate at (a) Taware Colony, Pune-Satara Road, Pune-411 009, (b) Survey No.53, Katraj, Pune-Satara Road, Pune 411 046, and (c) Behind Ashok Leyland Company, Pune-Mumbai Highway, Ambegaon, Pune 411 046.

7. He submitted that in the present case, admittedly, the Government has not issued any Notification as contemplated by proviso to Section 3(15) of the Act. Section 10 of the Act lays down that provisions of Chapter III shall apply to every undertaking, where 50 or more

employees are employed, or were employed on any day of the preceding 12 months. He submitted that Mazdoor Sanghatana had obtained recognition in relation to the respondent No.2 having head office, show-room as also workshop, which constitutes one undertaking. It, therefore, cannot be said that Mazdoor Sanghatana ought to have applied for recognition in respect of individual concern situate at (a) Taware Colony, Pune-Satara Road, Pune-411 009, (b) Survey No.53, Katraj, Pune-Satara Road, Pune 411 046, and (c) Behind Ashok Leyland Company, Pune-Mumbai Highway, Ambegaon, Pune 411 046. If the interpretation suggested by Kamgar Sanghatana is accepted, it will be very easy for the employer to transfer the employees from (a) concern to (b) concern below the required strength as contemplated by Section 10 of the Act.

8. He further submitted that proviso to Section 3(15) lays down that the State Government may notify a group of concerns owned by the same employer in any industry to be one undertaking for the purpose of Chapter III. However, there is no procedure prescribed for making any application before the State Government for notifying a group of concerns owned by the same employer in any industry to be one undertaking. He further submitted that the impugned order is also liable to be set aside as Industrial Court has virtually sat in appeal over its own order passed on 24.07.2012. If at all Kamgar Sanghatana was aggrieved by the order dated 24.07.2012, it should have challenged that order before the higher forum. In support of his submissions, he relied upon the following decisions:

- a. *Vegetable Vitamin Foods Company (Pvt.) Ltd. Vs. Presiding Officer, Labour Court, 1986 (2) LLJ 400;*
- b. *N.R.C. Employees' Union Vs. Government of Maharashtra, Department of Industries, Energy & Labour, 2012 I CLR 196;* and
- c. *Bharatiya Kamgar Sena Vs. Otis Elevator Employees*

Union, Writ Petition No.1293 of 2012 decided on 09.10.2014 by this Court (Coram: S. J. Vazifdar & A. K. Menon, JJ.).

9. On the other hand, Mr. Nerlekar supported the impugned order. He submitted that basically, the earlier application filed by Mazdoor Sanghatana for recognition in respect of 3 concerns of respondent No.2 itself was not maintainable. The Industrial Court committed mistake in granting recognition by order dated 24.07.2012. He submitted that Section 3(3) of the Act defines expression “concern” to mean any premises including the precincts thereof where any industry to which the Central Act applies is carried on. Section 3(15) defines the expression “undertaking” to mean any concern in industry to be one undertaking for the purpose of Chapter III. Proviso thereto lays down that the State Government may notify a group of concerns owned by the same employer in any industry to be one undertaking for the purpose of that Chapter. In other words, he submitted that Mazdoor Sanghatana ought to have made separate applications qua 3 concerns of the respondent No.2 namely concerns (a) Taware Colony, Pune-Satara Road, Pune-411 009, (b) Survey No.53, Katraj, Pune-Satara Road, Pune 411 046, and (c) Behind Ashok Leyland Company, Pune-Mumbai Highway, Ambegaon, Pune 411 046. In support of his submissions, he relied upon the decision of this Court in the case of *Pfizer Employees Union, Bombay Vs. Mazdoor Congress, Bombay*, (1980) 1 LLJ 65.

10. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. Now, it is not in dispute that Mazdoor Sanghatana filed application under Section 11 of the Act on 19.04.2011 seeking registration as a recognized union in respect of following establishments:

- (a) Taware Colony, Pune-Satara Road, Pune-411 009,
- (b) Survey No.53, Katraj, Pune-Satara Road, Pune 411 046, and
- (c) Behind Ashok Leyland Company, Pune-Mumbai Highway, Ambegaon, Pune 411 046.

11. The short question is whether such application is maintainable.

Sections 3(3) and 3(15) of the Act read as under:

“3. Definitions.- In this Act, unless the context requires otherwise,-

(3) “concern” means any premises including the precincts thereof where any industry to which the Central Act applies is carried on;

...

(15) “undertaking” for the purposes of Chapter III, means any concern in industry to be one undertaking for the purpose of that Chapter:

Provided that, the State Government may notify a group of concerns owned by the same employer in any industry to be one undertaking for the purpose of that Chapter;”

12. Perusal of the definition of the expression “undertaking” clearly shows that undertaking means **any concern in industry to be one undertaking for the purpose of Chapter III**. Section 3(3) defines expression “concern” to mean any premises including the precincts thereof where any industry to which the Central Act applies is carried on. In my opinion, the conjoint reading of Sections 3(3) and 3(15) leads to an irresistible conclusion that any premises where any industry to which the Central Applies is carried on has to be treated as separate concern. Proviso to Section 3(15) enables the Government to notify a group of concerns owned by the same employer in any industry to be one undertaking for the purpose of Chapter III. So unless the Government has notified the group of concerns, owned by the same employer in any industry to be one undertaking for the purpose of Chapter III, the different concerns owned by the same employer have to be treated separate qua the premises where the industry is carried on.

13. In the case of **Pfizer Employees Union** (*supra*), respondent No.1 therein had made application under Section 11 of the Act for recognition in respect of Thane establishment without including the other establishments namely, head office at Nariman Point and depot at Ray Road. The preliminary objection was taken to the maintainability of the application filed by the respondent No.1 on the ground that company had 3 establishments. All these 3 establishments constituted one concern within the meaning of Section 3(3). It was further contended that under Section 3(15), all the 3 establishments would constitute an “undertaking” and one application for recognition will have to be filed in respect of these 3 establishments. Respondent No.1 having filed application only in respect of Thane establishment without including the other 2 establishments, the application was not maintainable and was liable to be dismissed in limine. The Industrial Court overruled the objections. Aggrieved by that order, the Petition was instituted in this Court. The Division Bench of this Court considered the provisions of Sections 3(3), 3(15), 11 and 12 of the Act, and in paragraph 10, it was observed as under:

“10. ... Judged in that light, we are of the view, that the expressions "any" occurring in sub-s. (15) of S. 3 could be more appropriately used as indicating one concern, as against more than one. Concern as defined in sub-s. (3) of S. 3 undoubtedly means any premises including the precincts thereof where any industry to which the Central Act applies is carried on. The expression "any" in this context means only one premises and not more than one premises. What is more, concern here contemplated is any one concern in any industry. In sub-s. (15) of S. 3 where the meaning of the expression "undertaking" has been given, in our opinion, the expression "any" has been used to mean a single concern as distinguished from more than one concern in an industry. It would be one undertaking for the purpose of Chapter III, viz, for the purpose of recognition of unions, That more than one concern of the same employer in an industry were not within the contemplation of the Legislature, when using the expression "undertaking" in sub-s. (15) of S. 3 is made clear by the legislature by providing a proviso which specifically lays down that the State Government may notify a group of concerns owned by the same employer in any industry to be one undertaking for the purpose of

that Chapter. To our mind it is, therefore, clear that as a normal rule, the Legislature thought and intended that collective bargaining could be better facilitated by providing for the recognition of an individual concern, construing it as one undertaking, for the purposes of enabling it to get recognition under Chapter III of the Act. The Legislature also took abundant care to see that in the event of the State Government coming to the conclusion that in certain circumstances, either depending upon the number of employees in a particular concern or for any other reasons, it is more conducive for carrying out the objects of the Act and facilitate collective bargaining for certain undertakings that more than one concern in an industry belonging to the same employer should be deemed to be one undertaking for the purpose of being recognised as one undertaking under S. 11 in Chapter III of the Act, there ought to be a specific provision to enable the State Government to do so. It is precisely for that purpose that the proviso to sub-s. (15) of S. 3 provides, that the State Government may notify a group of concerns owned by the same employer in any industry to be one undertaking for the purposes of that Chapter. This proviso further confirms the view we are taking about the interpretation of the words "any concern" occurring in the main part of sub-s. (15) of S. 3, viz., that the word "any" was intended to cover only one concern and not more than one concern. The Legislature must have felt that in the absence of the proviso the main part of the definition in sub-s. (15) of S. 3 could not take in more than one concern in an undertaking belonging to the same employer. That accounts why the proviso was called for. ...”

14. It was held that the expression “any” occurring in Section 3(15) means only one premises and not more than one premises. What is more, concern here contemplated is any one concern in any industry. The expression “any” has been used to mean a single concern as distinguished from more than one concern in an industry. It would be one undertaking for the purpose of Chapter III, namely for the purpose recognition of unions. That more than one concern of the same employer in an industry were not within contemplation of the Legislature, when using the expression “undertaking” in Section 3(15), is made clear by the Legislature by providing a proviso which specifically lays down that the State Government may notify a group of concerns owned by the same employer in any industry to be one undertaking for the purpose of that Chapter. In my opinion, the controversy raised in this Petition is

squarely covered by the decision of **Pfizer Employees Union** (*supra*).

15. Mr. Kulkarni submitted that if such construction is given to the provisions of Sections 3(3) and 3(15) of the Act, it will give opportunity to the employer to ensure that qua individual concern, employees are less than required numbers as contemplated by Section 10 of the Act. It is not possible to accept this submission. The Legislature has provided the remedy as contemplated by proviso to Section 3(15) of the Act.

16. Mr. Kulkarni relied upon the decision of this Court in the case of **Vegetable Vitamin Foods Company (P) Ltd.** (*supra*) to contend that though the word “may” is employed in proviso to Section 3(15), it has to be construed as “shall” thereby meaning that the provision is mandatory. It is not possible to accept this submission as before notifying a group of concerns owned by the same employer in any industry to be one undertaking for the purpose of Chapter III, as held by this Court in **Pfizer Employees Union** (*supra*), the Government has to come to the conclusion that in certain circumstances, either depending upon the number of employees in a particular concern or for any other reason, it is more conducive for carrying out the objects of the Act and facilitate collective bargaining for certain undertakings that more than one concern in any industry belonging to the same same employer should be deemed to be one undertaking for the purpose of being recognised as one undertaking under Section 11 of the Act. It is in that context, the Legislature took abundant care enabling the State Government to do so.

17. Mr. Kulkarni also relied upon the decision of this Court in the case of **N.R.C. Employees' Union** (*supra*). In that case, the question that fell for consideration was whether the recognition accorded to the staff union comes to an end automatically because the workplace of the staff was shifted. It is in that context in paragraph 20, the Division

Bench observed thus,

“20. The submission of the learned Counsel for the respondents that the staff union has lost its status as a recognised union for the staff when the staff was shifted to the factory premises is fallacious. The Mazdoor Sangh applied for registration as a recognised union of the workmen in the factory in place of the MGKU in 1995 on the basis of their membership in the factory between October 1994 and March 1995. It did not simultaneously make any application for clubbing the concern at the factory with the concern at the office premises into one undertaking as is permissible in law. It chose to restrict its application made under S.14 of the MRTU and PULP act to the workmen in the factory. S.11 of the MRTU Act provides that an application may be filed by a union before the Industrial court for registering it as the recognised union for an undertaking. The word "undertaking" has been defined in the Act to mean any concern of the industry. "Concern" as defined in the Act means any premises including the precincts thereof where an industry is run. However while interpreting these words one cannot restrict the meaning only to the physical space of the building or premises in which the industry is run. It would have to mean and include the workmen employed in the particular premises or concern of the industry. Recognition of a union would have to be qua the workmen working in the concern. Recognition of a union cannot be only in respect of a physical space. For example, if a union is granted recognition in respect of a concern, meaning the physical space alone and the employer shifts the workplace of these workmen to another building it would be absurd to expect the union to apply for recognition once again. That could never have been the legislative intent. In a given case if an employer terminates the services of the employees in one unit where union A was the recognised union and shifts the workmen who were members of Union B (also recognised) to these premises from their original place of work, it can hardly be said that Union B would have to seek recognition again. Similarly when the members of a recognised union are shifted to a unit where there is already a recognised union of the workers in that unit in existence, the former cannot automatically lose its recognition. In fact the Act does not contemplate an automatic loss of recognition for any reason. It is only on an application being made to the Industrial Court that the recognition of a union can be cancelled. Even the cancellation can be effected only for the specific grounds mentioned in S.13. Shifting of the location of the work place of the members of the recognised union is not one such ground.”

18. Mr. Kulkarni relied upon the decision of this Court in **Bhartiya Kamgar Sena** (*supra*). In that case, on behalf of the petitioner, it was

contended that the field workers were not as a matter of fact, connected to or associated with the undertaking in any manner. The Division Bench of this Court considered the evidence of the witnesses and in paragraph 20, contention that the field workers cannot be said to be employed in an undertaking or precincts thereof, was not accepted. In none of the cases relied by Mr. Kulkarni, provisions of Sections 3(3) and 3(15) of the Act came for consideration. In my opinion, the controversy raised in the present Petition is covered by the decision of the Division Bench of this Court in **Pfizer Employees Union** (*supra*).

19. Mr. Kulkarni submitted that the impugned order is also liable to be set aside as Industrial Court has virtually sat in appeal over its own order passed on 24.07.2012. If at all Kamgar Sanghatana was aggrieved by the order dated 24.07.2012, it should have challenged that order before the higher forum. It is not possible to accept this submission having regard to Section 13 of the Act. Section 13 reads as under:

“13. Cancellation of recognition and suspension of rights. -

(1) The Industrial Court shall cancel the recognition of a union if after giving notice to such union to show cause why its recognition should not be cancelled, and after holding an inquiry, it is satisfied, -

(i) that it was recognised under mistake, misrepresentation or fraud; or

(ii) that the membership of the union has, for a continuous period of six calendar months, fallen below the minimum required under section 11 for its recognition :

Provided that, where a strike (not being an illegal strike under the Central Act) has extended to a period exceeding fourteen days in any calendar month, such month shall be excluded in computing the said period of six months :

Provided further that, the recognition of a union shall not be cancelled under the provisions of this sub-clause, unless its membership for the calendar month in which show cause notice under this section was issued was less than such minimum; or

(iii) that the recognised union has, after its recognition, failed to observe any of the conditions specified in section 19; or

(iv) that the recognised union is not being conducted bona fide in the interest of employees, but in the interests of employer to the prejudice of the interest of employees; or

(v) that it has instigated, aided or assisted the commencement or continuation of a strike which is deemed to be illegal under this Act; or

(vi) that its registration under the Trade Unions Act, 1926, XVI of 1926 is cancelled; or

(vii) that another union has been recognised in place of a union recognised under this Chapter.

(2) The Industrial Court may cancel the recognition of a union if, after giving notice to such union to show cause why its recognition should not be cancelled, and after holding an inquiry, it is satisfied, that it has committed any practice which is, or has been declared as, an unfair labour practice under this Act :

Provided that, if having regard to the circumstances in which such practice has been committed, the Industrial Court is of opinion, that instead of cancellation of the recognition of the union, it may suspend all or any of its rights under sub-section (1) of section 20 or under section 23, the Industrial Court may pass an order accordingly, and specify the period for which such suspension may remain in force.”

20. Perusal of Section 13(1)(i) shows that Industrial Court is conferred with the power to cancel the recognition of a Union after holding an inquiry, if it is satisfied that recognition was accorded under mistake, misrepresentation or fraud. If the contention of Mr. Kulkarni is accepted, in that event, Section 13 will be rendered otiose. I, therefore, find no merit in this submission.

21. Mr. Kulkarni submitted that there was no mistake or misrepresentation while granting recognition. It is not possible to accept this submission as I have already indicated that the Application (MRTU) 12 of 2011 made by Mazdoor Sangh on 19.04.2011 in relation to the registration as recognized Union in relation to the 3 concerns was misconceived and not maintainable. The Industrial Court obviously made mistake in allowing the application on 24.07.2012. In the

impugned order, the Industrial Court rightly held that the recognition granted earlier was by mistake or misrepresentation and is, therefore, liable to be cancelled as provided under Section 13(1)(i) of the Act. For all these reasons, I do not find that the Industrial Court committed any error in passing the impugned order. In the result, Petition fails and the same is dismissed. Rule is discharged. In the circumstances of the case, there shall be no order as to costs.

22. At this stage, Mr. Kulkarni orally applies for continuation of ad-interim order dated 01.08.2014 for a period of 6 weeks from today. Mr. Yadav opposes the oral application.

23. Having regard to the fact that the ad-interim order is operating since 01.08.2014 and the petitioner intends to challenge this order before the higher Court, I find that the request made by Mr. Kulkarni is reasonable. Hence, notwithstanding dismissal of the petition, ad-interim order dated 01.08.2014 shall remain in force for the period of 6 weeks from today. Order accordingly.

(R. G. KETKAR, J.)

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