

LPA No. 568 of 2015. [O&M]
Date of Decision: 20th April, 2015.

State of Haryana & Ors. Respondents

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The appellant is a registered Union called All Escorts Employees Union (for short hereinafter referred as “Union”). The Union sought the approval of amendment to Rule 4 of its Rules/Constitution before respondent No.3, which was declined vide order dated 28.08.2002. Aggrieved by that order, the Union preferred Civil Writ Petition before this Court which has been dismissed by learned Single Judge on 07.10.2014. The aggrieved appellant-Union has thus preferred this Letter Patent Appeal.

[3]. The appellant-Union was constituted in the year 1968 and registered at Sr. No. 75. In the month of August, 2001 the unit manufacturing two wheeler motorcycles under the brand name of 'Yamaha' got segregated from the Escorts Group of Industries. Thus, it became a 100% subsidiary of 'Yamahaa Motor Company, Japan'.

In view of that segregation, the Escorts Group of Companies ceased

to have any concern with the manufacturing of motorcycle and ownership or management of motorcycle manufacturing unit which is now exclusively with the 'Yamahaa Motor Company, Japan' named in India as 'Yamahaa Motor India Private Limited'. The Escorts Company in fact does not have any share-holding with it. The workers of the motorcycle manufacturing unit have also legally ceased to be members of the appellant-Union by virtue of the existing Rule 4 of its Constitution/Rules, for the reason that they do not have any commonness of interest with the workers of Escorts Group of Industries working in other units manufacturing various equipments relating to agricultural and railway.

[4]. In the aforesaid background, appellant-Union intended to amend Rule 4 of its Constitution/Rules by substituting the existing rule. It is relevant to extract the existing Rule 4 of Rules/ Constitution and so also proposed Rule 4 of Rules/Constitution, which are reproduced herein:-

“Existing Rule 4 of the Constitution/Rules of All Escorts/Employees Union (Regd. No.75).

4.Membership- Any workman employed in Escorts Group of Industries giving in writing of his faith in the objects of the union and assuring to remain in discipline, can become a member of the union after paying the prescribed subscription. The membership would terminate automatically on leaving the group.

Proposed amendment as requested by the petitioner union, to above quoted existing Rule 4 by the All Escorts Employees Union (Regd. No.75).

4. Membership- Any workman employed in an industry originally established by the Escorts Group of Industries giving in writing of his faith in the objects of the union and assuring to remain in discipline, can become a member of the union after paying the prescribed subscription. The membership shall terminate on lawful retirement or on resignation.

Explanation- The membership shall not be affected due to change of name of the industry established by the Escorts Group of Industries or transfer of management.”

[5]. Respondent No.3 declined to permit the Union to amend the Rule for the reason that the proposed amendment was exceeding statutory limits and if allowed that would amount to amending the Trade Unions Act, 1926. The extract of the decision of respondent No.3 is reproduced herein:-

'If the industrial unit(s) manufacturing a particular kind of items, say agriculture items, happen to be segregated from the Escorts Group of Industries then the workers working in such unit (s) would automatically cease to continue as members of the present union under the existing Rule 4. However under the proposed amending Rule 4 read with explanation appended thereto, such workers may continue to remain members of the union despite the fact that after such segregation they cannot have any commonness of interests with other workers of the Escorts Group of Industries. Such segregation has in fact taken place. By the time of submission of present request by the union on 25.06.2001 the Escorts Group of Industries used to manufacture two wheeler motor cycles. But in August, 2001 the unit manufacturing this two wheeler motor cycles under the brand name of 'Yamahaa' segregated from the Escorts Group of

Industries and has become a 100% subsidiary of “Yamahaa Motor Company, Japan.” Since August 2001 the Escorts Group of Industries has totally ceased to have any concern with the motor cycle manufacturing. After August, 2001 the Escorts Group of Industries has not been manufacturing motor cycles. The ownership and management of motor cycle manufacturing unit is now of Yamahaa Motor Company, Japan and the Escorts do not have any kind of concern therewith. The workers working in the motor cycle manufacturing have thus legally ceased to be the members of the present union by virtue of existing Rule 4 of the Constitution. They do not have any commonness of interests with the workers of Escorts Group of Industries. But if the proposed amendment is allowed, such workers, if they so like, would continue to remain members of this union despite there being no commonness of interests. Such a provision would be contrary to the above said provisions of the Act. Thereof, the request of the union for amending Rule 4 does not merit to be allowed. Hence the application is rejected. The workers employed in the segregating industrial unit(s) may well form their own union, if so desired. [Emphasis applied]

[6]. Learned Single Judge considered the grievance of the appellant-Union and upheld the decision of respondent No.3 declining the substitution of Rule 4 to the Constitution of the appellant-Union. After making reference to relevant provisions of the Trade Unions Act, 1926 like Section 2(g) and 2(h) read with Section 6 (e) and on appraising the factual aspect like constitution of the appellant-trade union; subsequent segregation of Escorts Group of Industries as manufacture of two wheeler motor cycles and taking

over of that business by 'Yamaha' which has got 100% subsidiary of 'Yamaha Motor Company, Japan' in the month of August, 2001, learned Single Judge has found no error of law or facts in the decision of respondent No.3.

[7]. The appellant-Union contends that as per the provisions of the Industrial Disputes Act, 1947 and Trade Unions Act, 1926, it is the priority and privilege of the Union for the membership for any kind of Industries and that Registrar/Assistant Registrar has very limited right to interfere with the internal working of a Trade Union.

[8]. We have given our thoughtful consideration to the submissions and are of the view that the Statutory Authority has not interfered with the internal working of the Trade Union. Rather, the order passed by respondent No. 3 is in conformity with the provisions of Trade Union Act, 1926. In this regard, reference may be made to Sections 2(g), 2(h), 6(e) and 6(g) of the Trade Unions Act, 1926 relied upon by respondent No. 3 as well as the learned Single Judge.

"2. Definitions.- *In this Act, the appropriate Government means, in relation to Trade Unions whose objects are not confined to one State, the Central Government, and in relation to other Trade Unions, the State Government, and, unless there is anything repugnant in the subject or context,-*

(a) to (f) xx xx xx

(g) **"trade dispute"** *means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or*

the terms of employment or the conditions of labour, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises; and

*(h) **"Trade Union"** means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions:*

Provided that this Act shall not affect--

(i) any agreement between partners as to their own business;

(ii) any agreement between an employer and those employed by him as to such employment; or

(iii) any agreement in considerations of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft.

6. Provisions to be contained in the rules of a Trade Union- *A Trade Union shall not be entitled to registration under this Act, unless the executive thereof is constituted in accordance with the provisions of this Act, and the rules thereof provide for the following matters, namely:-*

(e) the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as (Officer-bearers) required under Section 22 to form the executive of the Trade Union;

[9]. Sections 9A and 22 of the Trade Unions Act, 1926, which are relevant to the controversy in issue, are also reproduced as

under:-

“9A. Minimum requirement about membership of a Trade Union:- A registered Trade Union of workmen shall at all times continue to have not less than ten per cent, or one hundred of the workmen, whichever is less, subject to a minimum of seven, engaged or employed in an establishment or industry with which it is connected, as its members.

22. Proportion of office-bearers to be connected with the industry.-[1] Not less than one-half of the total number of the office-bearers of every registered Trade Union in an un-recognised sector shall be persons actually engaged or employed in an industry with which the Trade Union is connected.

Provided that the appropriate Government may, by special or general order, declare that the provisions of this Section shall not apply to any Trade Union or class of Trade Unions specified in the order.

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[10]. It emerges from the conjoint reading of the above-reproduced provisions of 1926 Act read with 1938 Regulations framed there-under, that the Legislative object for the formation of a Trade Union is collective bargaining in resolving the trade disputes that might arise between the employers and workmen, between workmen and workmen or between employers and employers.

[11]. A Trade Union is entitled to seek its registration for the above mentioned purpose subject to fulfilling the terms and conditions contained in the Act which implies that the Rules of such Trade Union must be in conformity with Section 6 of the Act. It may be seen from Section 6[e] that the ordinary members of Trade Union

shall be those persons who are “actually engaged or employed in an industry with which the Trade Union is connected....”.

[12]. It may also be noticed at this stage that as per Section 9A of the Act, a Trade Union is required to have not less than 10% of the Workmen at all times to be its members and such Workmen must be “engaged or employed in an establishment or industry with which it is connected...”. Likewise, Section 22 contemplates that not less than half of the total number of the officer bearers of every registered Trade Union in an un-recognised sector “shall be persons actually engaged or employed in an industry with which the Trade Union is connected....”.

[13]. The statutory Scheme thus repeatedly refers to the direct connectivity between the industry where the worker or employee is engaged and the Trade Union in which such worker or employee is a member. The existence of commonness and relationship is, therefore, *sine-qua-non* for the constitution of a Trade Union or enrollment of its members and office bearers. To say it differently, there can not be a Trade Union for collective bargaining in a trade dispute where the Trade Union is not connected at all with the Industry.

[14]. Having analysed the statutory scheme, let us again advert to the facts of the case.

[15]. It is seen from the un-amended Rule 4 of the Constitution of the appellant Union that it represents a workman employed in Escorts Group of Companies. It is further evident that if such workman leaves the Escorts Group of Industries, the membership of

the appellant Trade Union stands terminated automatically. It is obvious that the appellant Trade-Union represents the workmen who are employed or engaged with Escorts Group of Companies. It has no concern with a trade dispute of a workman or employee who is not connected with Escorts Group of Companies.

[16]. Yamaha Motor Cycle Industries un-disputably has no concern with the Escorts Group of Companies. Its workers and employees too have no connectivity with Escorts Group of Companies. Yet by virtue of the proposed amendment, the appellant Union wanted to expand the scope of its activities or bargaining power even with respect to workmen of 'Yamaha industries' with whom the appellant – Trade Union has no concern at all. The proposed amendment, if approved, would entitle the appellant Trade Union to represent the trade dispute of the workmen and employees who are presently employed in an industry which was originally established by the Escorts Group of Companies. Pertinently, the proposed amendment is not restricted to those workmen or employees alone who were initially employed by Escorts Group of Companies and are still in the employment of Yamaha Motor Cycle Industry. Rather, the proposed amendment includes those workmen/employees also who have been engaged by Yamaha after August, 2001 and have no concern whatsoever with the Escorts Group of Companies. Resultantly, the proposed amendment thus amounts to authorising the appellant – Trade Union to raise trade dispute against an establishment or Industry with whom it has no connectivity. Such authorisation, if given to the appellant, would run counter to the

legislative object, import and spirit of various provisions of the 1926 Act, referred to in *extenso* in the previous part of this order.

[17]. No error of law or facts, thus, has been committed by respondent No. 3 while passing the impugned order or by learned Single Judge while affirming the same.

[18]. Dismissed.

[19]. Since the appeal has been dismissed on merits, there is no necessity to go into the question of delay in filing thereof.

(SURYA KANT)
JUDGE

April 20, 2015.
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(P.B.BAJANTHRI)
JUDGE