

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1999 OF 2016**

Pune Zilha Kamgar Sangh

..Petitioner

Vs.

Maharashtra Rajya Rashtriya Kamgar Sangh & Ors. ..Respondents

Mr. V. P. Vaidya a/w Mr. M. M. Agavekar for the Petitioner

Mr. N. A. Kulkarni for the Respondent No.1

Mr. Chetan Alai a/w Mr. Varad Joshi for the Respondent No.2

CORAM : R. M. SAVANT, J.

DATE : 31st AUGUST, 2016

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 28-2-2015 passed by the Learned Member of the Industrial Court, Pune by which order the Application MRTU No.14 of 2011 filed under Section 14 of the MRTU and PULP Act by the Respondents came to be allowed and resultantly a direction came to be issued that the Respondents Union be registered as a recognised Union in place of the Petitioner herein who was the non Applicant No.1, and a certificate be accordingly issued.

2 The Respondent No.1 herein who is the proponent of the application made under Section 14 of the said Act in terms of the requirement of the said Section in paragraph 3 set out the extent of its membership among the employees of the Respondent No.2 company. In so far as January 2011 is concerned, the number of members claimed by it is 209 and the percentage

visa-a-vis total membership claimed was 69.89% and February 2011 the total number of members claimed was 222 and the total percentage was 78%. In the context of the challenge raised in the above Petition it would be relevant to note at this stage that in so far as the said claim of the Respondent No.1 herein i.e. the Applicant in the said application is concerned, the same was not dealt with by the Petitioner Union. In the reply to the said application, the sum and substance of the defence is comprised in paragraph 6 of the said reply. In paragraph 6 it has been stated that the employees which the Applicants claims as its members have been admitted as members by the Respondent No.1 by resolution dated 31-3-2011 though the Respondent No.1 alleges that the membership subscription has been collected from the earlier date. It is further stated that the date of resolution i.e. 31-3-2011 is the date of the membership of the concerned employees and on the said basis it is contended that the Applicant does not have the membership in the 6 months prior to the filing of the application. Save and except the aforesaid defence there was no defence put up by the Petitioner on the basis of any dispute as regards the total employees working in the Respondent No.2 or that any dispute was raised as regards the extent of the membership claimed by the Respondent No.1.

3 Having regard to the nature of the application an Investigation Officer came to be appointed by the Industrial Court to submit a report to it as regards the claim of membership. It seems that before the Investigation Officer

also, no material was placed by the Petitioner herein as regards the actual number of employees working who according to the Petitioner were working with the Respondent No.2. A contention is now sought to be raised that though objection was sought to be taken as regards the total number of employees, a list of which was submitted on behalf of the Respondent No.2 the said objection was not entertained. After carrying out the inquiry, the Investigation Officer submitted his report to the Industrial Court on 22-2-2013. After the said report was submitted to the Industrial Court, the Petitioner herein filed its objections and amongst the objection taken was that there are more employees working with the Respondent No.2 then the 299 employees list of which was produced by the Respondent No.2. To the said objection a list of about 251 persons was annexed which according to the Petitioner were additional employees which were working with Respondent No.2. On behalf of the Applicant Union i.e. the Respondent No.1 herein evidence was led of the Vice President Mr. Shashikant Mahadeo Hadkar where as on behalf of the Petitioner herein evidence of two employees was led. Before the Industrial Court the following three contentions were raised namely that the list produced by the Respondent No.2 is not the complete list of the employees working with it, that the resolution being passed on 31-3-2011 the membership would have to be reckoned from the said date and not from an anterior date and therefore the 6 month period is not completed in June 2013 and lastly that the documents of payment of subscription for December 2010,

January 2011 and February 2011 appeared to be questionable having regard to the manner in which the subscription money is required to be appropriated between the district branch and the main office of the Respondent No.1 especially having regard to the fact that the whole amount collected on a particular date is deposited in the account of the Respondents in Mumbai on the same date. The said contentions were not countenanced by the Industrial Court.

In so far as the first contention was concerned, the Industrial Court having regard to the material on record did not find any merit in the said contention.

In so far as the second contention is concerned, the Industrial Court was of the view that the passing of the resolution was a mere formality as the subscription for membership was already paid by the concerned employees.

In so far as the third contention is concerned, the Industrial Court did not deem it appropriate to countenance the same being only hyper technical.

As indicated above by the impugned order dated 28-2-2015 the

application came to be allowed and the Respondent No.1 herein came to be accorded the status of a Recognized Union in place of the Petitioner Union.

4 The Learned Counsel appearing on behalf of the Petitioner Mr. Vaidya would seek to reiterate the case of the Petitioner as urged before the Industrial Court and would seek to urge the three contentions which were urged before the Industrial Court.

5 Per contra the Learned Counsel Mr. Kulkarni appearing for the Respondent No.1 would support the impugned order and would contend that the Respondent No.1 i.e. the Applicant had membership of about 205 employees that the objection regarding the number of employees sought to be raised was never raised before the Investigating Officer. The Learned Counsel would contend that in so far as the second submission is concerned, the passing of the resolution was a mere formality as in terms of the Constitution of the Respondent Union the employees had already paid the subscription amount so as to entitle them to the membership of the Respondent Union.

6 Having heard the Learned Counsel for the parties, in my view there is no merit in the above Petition. As observed in the earlier part of this order in respect of the claim made by the Respondent No.1 in paragraph 3 of its application. The said claim has not been disputed in any manner. The

defence taken by the Petitioner to the said application has been adverted to hereinabove and the principal defence was that the resolution being passed on 31-3-2011 by the Respondent No.1 the membership could not operate from an anterior date. Hence the issue which the Petitioner now seeks to raise as regards the number of employees working with the Respondent No.2 was not raised in the reply filed which is the first reaction in point of time to the application for recognition. As indicated above the objection based on there being 251 additional employees was taken for the first time after the report was submitted by the Investigation Officer. The evidence was also sought to be adduced on the said basis, in the absence of any foundation in the pleadings as regards the claim of the Petitioner that there were 251 additional employees such evidence even if adduced could not be considered. That apart before the Investigation Officer also no list of the so called 251 additional members was produced, neither was any reply filed before the Investigation Officer. In fact in the evidence led of the witnesses of the Petitioner it is only stated that they have taken objection before the Investigation Officer but the said objection was not taken into consideration. It is also required to be noted that the witness of the Petitioner Union in his evidence has stated that code numbers of the employees of the Respondent No.2 being with the number 100 or 10. A perusal of the list of the alleged additional members would disclose that the code numbers of the said alleged additional members do not begin with the number 100 or 10 but begin with the number 21, hence the case of the

Petitioner that there are 251 additional members is dented by the evidence of the Petitioner's own witness. It is well settled that the report of the Investigation Officer is an input for the Industrial Court whilst adjudicating an application under Section 14 of the said Act.

7 In so far as the first contention is concerned, as indicated above, the Industrial Court has on the basis of the material on record has come to a conclusion that there is no substance in the said contention. This Court does not find fault with the said conclusion arrived at by the Industrial Court having regard to the facts as aforestated.

 In so far as the second contention is concerned, the Respondents claim that the employees who are its members are such from the preceding 6 months i.e. January 2011. The material regarding the payment of subscription by the employees in December 2010, January 2011 and February 2011 was placed on record before the Investigation Officer. In my view, passing of the resolution approving the membership can only be said to be a formality which was completed and the same would not mean that the membership is from 31-3-2011 when the resolution was passed.

 In so far as the last contention is concerned, the said submission has rightly not been countenanced by the Industrial Court once the material

regarding the payment of subscription has come on record. Since out of the 299 employees working with the Respondent No.2, it has been factually found that 205 are the members of the Respondent No.1 herein and since no contra material was produced by the Petitioner to show that it continues to have a majority, the impugned order passed by the Industrial Court cannot be said to suffer from any error of jurisdiction or any other illegality or infirmity for this Court to interfere in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]