

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5578 OF 2017

IMD Kamgar Samanvaya Sangh	]	Petitioners
Vs.		
Machinery Manufacturing Workers	]	
[INTUC]& anr.	]	Respondents

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 Mr. Prosper D'Souza, for petitioner.
 Mr. T.S. Ingale, for respondent No.1.

CORAM : R.G. KETKAR, J.

DATE : 13th JULY, 2017.

P.C.

Heard Mr. D'Souza, learned Counsel for the petitioner and Mr. Ingale, learned Counsel for respondent No.1.

2. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 19th December, 2016 below Exhibit-U-10 as also the judgment and order dated 19th December, 2016 below Exhibit UA-9 in Application (MRTU) No. 6 of 2014 passed by the learned Member, Industrial Court, Pune [for short 'Tribunal']. By order dated 19th December, 2016 below Exhibit-U-10, Tribunal appointed Investigating Officer to verify the membership of respondent No.1 as also of the petitioner herein after issuing notice to both the

Unions and calling upon them to produce relevant documents to ascertain their membership and to submit report within 90 days. By order dated 19th December, 2016 below Exhibit- UA-9, Tribunal rejected the application made by the petitioner for deciding additional issues 1(a), 1(b) and 1(c) as preliminary issues before hearing of other issues and verification of membership by the Investigating Officer.

3. In support of this Petition, Mr. D'Souza submitted that application is filed by the first respondent u/s 14 of the Maharashtra Recognition of Trade Union & Prevention of Unfair Labour Practices Act, 1971 [for short 'Act'] for registration as a recognized Union. Respondent No.1 relied upon purported certificate of Trade Union issued on 4th December, 1978 in the name of Machinery Manufacturing Workers Union. In other words, certificate of registration of Trade Union produced by the first respondent is not in respect of the first respondent. In fact, by communication dated 26th October, 1978 addressed by the Registrar of Trades Union, Maharashtra State, Mumbai to the General Secretary of Machinery Manufacturing Workers Union, Walchandnagar, it was informed that on 29th September, 1978, he had cancelled registration of the said Union as the said Union had continued wilfully to contravene the provisions of Section 28 of the Trades Unions Act, 1926.

4. Mr. D'Souza invited my attention to the written statement filed by the petitioner and in particular, paragraphs 2 and 3 thereof. In paragraph 2, petitioner specifically asserted

that no Union as described in the title of the application is registered as a trade union under No. PN-1024 by Deputy Registrar of Trade Unions, Pune on 4th December, 1978. Copy of the Registration certificate and Constitution filed by the first respondent itself proves the said fact. In paragraph 3, petitioner asserted that respondent No.2 herein is not an undertaking under the Act. Petitioner contended that “Walchandnagar Industries Limited [IMD]’ and “Walchand Industries Limited [Common Services Division] were and are two separate and distinct “Undertakings” under the Act. Petitioner has been granted recognition separately in two different applications by the Industrial Court, Pune for these two undertakings. He also invited my attention to paragraph 6 of the written statement filed by the second respondent wherein it is asserted that there is no undertaking by name 'Walchandnagar Industries Limited’. There are two separate undertakings viz:

[1] Walchand Industries Limited [Industrial Machinery Division]

[2] Walchand Industries Limited [Common Services Division].

Mr. D'Souza also relied upon Section 3 (17) of the Act which defines the expression “recognised Union” and Section 11 of the Act.

5. Mr. D'Souza further submitted that earlier respondent No.1 had filed application for impleadment in application [MRTU] No. 13 of 2005 before the Industrial Court at Pune. While rejecting the application on 13th June, 2006, the Tribunal observed in

paragraph 6 that there is no evidence in support of application filed by the first respondent below Exhibit-NAU-1. Neither affidavits are filed nor authenticated evidence is produced to show that Machinery Manufacturing Workers Union has been functioning with Walchandnagar Industries Limited, Walchandnagar since the year 1960. The Tribunal, prima facie, observed that Machinery Manufacturing Workers Union has failed to show its nexus with Walchandnagar Industries Limited, Walchandnagar and accordingly rejected the application. He submitted that said order had attained finality as respondent No.1 has not challenged the order. Principles of res-judicata apply and respondent No.1 is, therefore, barred from filing an application and has no locus standing to file application.

6. On the other hand, Mr. Ingale supported the impugned orders. He submitted that application was made by the first respondent u/s 11 of the Act on 24th January, 2014. Issues were framed on 18th July, 2014. Additional issues were framed on 19th September, 2015. He invited my attention to paragraph 5 of the written statement filed by the petitioner herein wherein it is contended that the first respondent has in the Annual Return for the year ending 31st December, 2013, submitted to the Additional Registrar of Trade Unions, Pune, copy of which is filed in this proceeding, shown at column-7 that it is affiliated to "INTUC" and in column-8, the Affiliation number is given as "IV/02383". The said Affiliation number and certificate is dated 13th May, 1960 [which has not been filed for ulterior reasons), whereas, the respondent No.1 claims to have been registered under the Trade

Unions Act 1926 only 4th December, 1978.

7. Mr. Ingale submitted that Tribunal rightly rejected Application Exhibit UA-9 for deciding additional issues 1(a), 1(b) and 1(c) as preliminary issues before hearing all other issues and verification of membership by the Investigating Officer. He submitted that this is purely a discretionary order and, therefore, no case is made out for interfering with that order.

8. I have considered rival submissions advanced by learned Counsel appearing for the parties. I have also perused material on record. A perusal of the application filed by the first respondent u/s 14 of the Act shows that in cause title, first respondent has described itself as Machinery Manufacturing workers Union [INTUC]. As against this, certificate of registration of trade union dated 4th December, 1978 shows that name of the trade union 'Machinery Manufacturing Workers Union' having registration No. PN-1024. Petitioners herein contend that no Union described in the cause title of the application is registered as a trade union under registration No. PN-1024. A perusal of paragraph 5 of the reply filed by the petitioner itself shows that petitioner is aware that respondent No.1 is affiliated to "INTUC" and in fact, affiliation number is also given. In view thereof, I do not find any merit in the submission of Mr. D'Souza that no Union as described in the cause title of the application is registered as a trade union under PN-1024.

9. Mr. D'Souza submitted that earlier respondent No.1

filed application for intervention which was rejected by order dated 13th June, 2006 by the Tribunal. In paragraph 6 it was observed thus:

“Prima facie, there is no evidence in support of application vide Exh. NAU-1. Neither affidavits are filed nor authentic evidence is produced to show that Machinery Manufacturing Workers Union has been functioning with the opponent since the year 1960. One cannot raise mechanical objection without any authenticity and material. Moreover, such objection cannot be raised only for the sake of objection. Thus, prima facie, Machinery Manufacturing Workers Union has failed to show its nexus with the opponent and the present matter”.

10. It is material to note that one of the issues framed on 19th September, 2015 viz: Issue No. 1(c) is to the following effect:

“Does the non-applicant No.2 prove that the application is barred by principles of res-judicata in view of the order dated 13.06.2006 below Exh.NAU-1 in Appl. (MRTU) No. 13/05?

11. As the said issue is already framed by the Tribunal, grievance made herein by the petitioner cannot be considered, lest, it will influence the Tribunal while deciding the said issue. By the impugned order, below Exhibit-U-10, Tribunal has appointed Investigating Officer to verify membership of the first respondent

as well as petitioner herein after issuing notice to both the Unions and calling upon them to produce relevant documents to ascertain their respective membership. Section 8 of the Act deals with Investigating Officers to be appointed by the State Government for assisting the Industrial Courts and Labour Courts in discharging of their duties. Section 9 prescribes duties of Investigating Officers amongst others. It is the duty of the Investigating Officer to assist Industrial Court in matters of verification of membership of Unions. As noted earlier, respondent No.1 has made application on the basis that it has majority of the employees in 2nd respondent herein in which the petitioner is registered as recognized Union. In terms of Section 11(2) of the act, application for recognition of Union has to be disposed of by the Industrial Court as far as within 3 months from the date of receipt of such application.

12. Mr. D'Souza also contended that in fact registration was cancelled on 26th October, 1978. A perusal of communication dated 26th October, 1978 shows that Registrar of Trade Union had cancelled registration on 29th September, 1978 on the ground that Machinery Manufacturing Workers Union had continued wilfully to contravene provisions of Section 28 of the Trade Unions Act, 1926 in that the Union had failed to send to the Registrar two prescribed dates in that General statement of accounts for the year ending 31st December, 1976 as required under that section to be sent annually to the Registrar. It is material to note that registration certificate was issued on 4th December, 1978. In view thereof, reliance placed on communication dated 26th October, 1978 is wholly misconceived.

13. Mr. D'Souza submitted that Walchandnagar Industries Limited [IMD] and Walchandnagar Industries Limited [Common Services Division] were and are two separate and distinct Industries and petitioner has been granted recognition separately in respect of these two undertakings. It is not necessary to deal with this aspect as one of the issues framed by the Tribunal i.e Issue No. 1 (b) which is to the following effect:

“1(b) Does the applicant prove that it is functioning in the non-applicant no.1 undertaking during the relevant period?”

requires respondent No.1 to establish that it was functioning during the relevant period.

14. By order dated 19th December, 2016 below Exhibit UA-9, Tribunal rejected application made by the petitioner for deciding additional issues 1(a), 1(b) and 1(c) as preliminary issues before hearing all other issues. I find merit in the submission of Mr. Ingale that this was a purely discretionary order. Order-XIV, Rule-2 (2) lays down that:

where issues both of law and of fact arise in the same suit, and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

- (a) the jurisdiction of the Court, or
- (b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

15. On 19th September, 2015, Tribunal framed following additional issues:

- 1(a) Does the applicant prove that it is registered under the Trade Unions Act, 1926 under No. PN-1024 on 04.12.1978?
- 1(b) Does the applicant prove that it is functioning in the non-applicant no.1 undertaking during the relevant period?
- 1(c) Does the non-applicant no.2 prove that the application is barred by principles of res-judicata in view of the order dated 13.06.2006 below Exh. NAU-1 in Appl. (MRTU) No. 13/05?

16. Issues No. 1(a), 1(b) and 1(c) cannot be said to be issues of law. For deciding these issues, evidence will have to be recorded. In view thereof and in view of the principles laid down in Order-XIV, Rule-2(2) of C.P.C or principles analogous thereto, I do not find that the Tribunal committed any error in rejecting application Exhibit-UA-9.

17. In view thereof, I do not find that any case is made out for invocation of powers under Article 226 and 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

[R.G. KETKAR, J.]