



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.555 OF 2018

Swarajya Kamgar Sanghtana,
Shop No.4/25, Dongare Complex,
Gajanan Colony, Navnagapur,
Tq. and Dist. Ahmednagar
Through its President
Yogesh Chandrakant Galande,
Age-32 years, Occu-Social work,
R/o as above

– PETITIONER

VERSUS

[1] Rashtravadi Maharashtra General
Kamgar Union, Gala No.2,
Central Building,
NPMC Market, Phase No.2,
Vashi, New Mumbai

[2] Exide Industries Ltd.,
Plot No.E-5, MIDC, Industrial Area,
Tq. And Dist. Ahmednagar

– RESPONDENTS

Mr.P.V.Barde, Advocate for the petitioner.
Mr.A.V.Patil, Advocate for respondent No.1.
Mr.V.N.Upadhye, Advocate for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 18/01/2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner/recognized Union is aggrieved by the order dated 12/10/2017 passed by the Industrial Court, Ahmednagar by which application Exh.U-2 filed by respondent No.1/new Union has been allowed and the entire legal rights of the petitioner/recognized Union have been practically suspended by restraining orders. The review application filed by the recognised Union Exh.CA-9 has been rejected by the impugned order dated 02/01/2018.

3. I have considered the submissions of the learned Advocates for the respective sides at length and have gone through the voluminous petition paper book with their assistance and the case law cited.

4. Though the learned Advocates canvassed their submissions over a period of almost 2 hours, I am not required to advert to their entire submissions considering that the controversy involved in this proceeding at this stage before me is with regard to, whether the recognized Union has complied with Section 19(iv) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (For short, 1971 Act). The rest of the contentions of the litigating sides are yet to be dealt with by the Industrial Court and hence it would be unfair to consider those

aspects at this stage in this petition which is restricted to the directions issued by the Industrial Court in the impugned orders.

5. There is no dispute that the petitioner / Union had applied for seeking recognition as a Trade Union with respondent No.2 / establishment. Pursuant to the judgment of the Industrial Court on the application filed by the Recognized Union u/s 11 and 12 of the 1971 Act, recognition was granted and a certificate was issued on 31/07/2014 pursuant to the judgment dated 25/07/2014.

6. Respondent No.1 namely the Rashtravadi Maharashtra General Kamgar Union, having its office at Vashi in New Mumbai, moved application (MRTU) No.2/2017 u/s 13 for seeking de-recognition of the recognized Union. Plentiful allegations have been set out in the application and one amongst them, which impressed the Industrial Court at the interim stage while passing the impugned orders, is that the recognized Union had played a fraud and resorted to misrepresentation while seeking recognition before the Industrial Court in relation to Section 19(iv). There can be no dispute that this allegation is an extremely serious allegation and would have various effects as any order to be passed on this count would mean that the recognized Union has misrepresented before the Industrial Court and

has fraudulently obtained the recognition certificate. Besides perjury, one of the effects of such a conclusion would be that those office bearers, who sought recognition, might be liable to face criminal prosecution.

7. The whole issue turns upon Section 19(iv) in the light of Sections 11, 12 and 13 of the 1971 Act. So also, regulation 18 of the Bombay Trade Unions Regulations, 1927 has a role to play. Section 20 of the MRTU and PULP Act deals with the rights of a recognized Union. Section 22 of the Trade Unions Act, 1926 deals with the *locus standi* of any trade Union which claims a right of relationship with the Industrial Establishment on the basis of which it could claim the right to represent the workers working in such Industry.

8. It is in the above backdrop that Section 11, 12, 13, 19 and 20 of the 1971 Act are reproduced as under :-

“11. APPLICATION FOR RECOGNITION OF UNION. –

(1) Any union (hereinafter referred to as the “applicant-union”) which has for the whole of the period of six calendar months immediately preceding the calendar month in which it so applies under this section a membership of not less than thirty per cent. of the number of employees employed in any undertaking may

apply in the prescribed form to the Industrial Court for being registered as a recognised union for such undertaking.

(2) Every such application shall be disposed of by the Industrial Court as far as possible within three months from the date of receipt of the application, where a group of concerns in any industry which is notified to be one undertaking for which recognition is applied for is situated in the same local area; and in any other case, within four months.

Explanation : ‘Local area’ for the purposes of this sub-section means the area which the State Government may, by notification in the Official Gazette, specify in the notification.

12. RECOGNITION OF UNION. –

(1) On receipt of an application from a union for recognition under section 11 and on payment of the prescribed fees, not exceeding rupees five the Industrial Court shall, if it finds the application on a preliminary scrutiny to be in order, cause notice to be displayed on the notice board of the undertaking, declaring its intention to consider the said application on the date specified in the notice, and calling upon the other union or unions, if any, having membership of employees in that undertaking and the employers and employees affected by the proposal to show cause, within a prescribed time, as to why recognition should not be granted to the applicant-union.

(2) If, after considering the objections, if any, that may be received under sub-section (1) from any other union (hereinafter referred to as “other union”) or employers or employees, if any,

and if after holding such enquiry in the matter as it deems fit, the Industrial Court comes to the conclusion that the conditions requisite for registration specified in section 11 are satisfied, and the applicant-union also complies with the conditions specified in section 19 of this Act, the Industrial Court shall, subject to the provisions of this section, grant recognition to the applicant-union under this Act, and issue a certificate of such recognition in such form as may be prescribed.

(3) If the Industrial Court comes to the conclusion, that any of the other unions has the largest membership of employees employed in the undertaking, and the said other union has notified to the Industrial Court its claim to be registered as a recognised union for such undertaking, and if it satisfies the conditions requisite for recognition specified in section 11, and also complies with the conditions specified in section 19 of this Act, the Industrial Court shall, subject to the provisions of this section, grant such recognition to the other union, and issue a certificate of such recognition in such form as may be prescribed.

Explanation : For the purpose of this sub-section, the other union shall be deemed to have applied for recognition in the same calendar month as the applicant-union.

(4) There shall not, at any time, be more than one recognised union in respect of the same undertaking.

(5) The Industrial Court shall not recognise any union, if it is satisfied that the application for its recognition is not made bona fide in the interest of the employees, but is made in the interest of the employer, to the prejudice of the interest of the employees.

(6) The Industrial Court shall not recognise any union, if, at any time, within six months immediately preceding the date of the application for recognition, the union has instigated, aided or assisted the commencement or continuation of a strike which is deemed to be illegal under this Act.

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.

19. OBLIGATIONS OF RECOGNISED UNION. –

The rules of a union seeking recognition under this Act shall

provide for the following matters, and the provisions thereof shall be duly observed by the upon, namely :- (i) the membership subscription shall be not less than fifty paise per month;

(ii) the Executive Committee shall meet at intervals of not more than three months;

(iii) all resolutions passed, whether by the Executive Committee or the general body of the union, shall be recorded in a minute book kept for the purpose;

(iv) an auditor appointed by the State Government may audit its account at least once in each financial year.

20. RIGHTS OF RECOGNISED UNION. –

(1) Such officers, members of the office staff and members of a recognised union as may be authorised by or under rules made in this behalf by the State Government shall, in such manner and subject to such conditions as may be prescribed, have a right, –

(a) to collect sums payable by members to the union on the premises, where wags are paid to them;

(b) to put up or cause to be put up a notice-board on the premises of the undertaking in which its members are employed and affix or cause to be affixed notice thereon;

(c) for the purpose of the prevention or settlement of an industrial dispute, –

(i) to hold discussions on the premises of the undertaking with the employees concerned, who are the members of the union but

so as not to interfere with the due working of the undertaking;

(ii) to meet and discuss, with an employer or any person appointed by him in that behalf, the grievances of employees employed in his undertaking;

(iii) to inspect, if necessary, in an undertaking any place where any employee of the undertaking is employed;

(d) to appear on behalf of any employee or employees in any domestic or departmental inquiry held by the employer.

(2) Where there is a recognised union for any undertaking, –

(a) that union alone shall have the right to appoint its nominees to represent workmen on the Works Committee constituted under section 3 of the Central Act;

(b) no employee shall be allowed to appear or act or be allowed to be represented in any proceedings under the Central Act (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration), except through the recognised union; and the decision arrived at, or order made, in such proceeding shall be binding on all the employees in such undertaking; and accordingly, the provisions of the Central Act, that is to say, the Industrial Disputes Act, 1947, XIV of 1947, shall stand amended in the manner and to the extent specified in Schedule I.”

[Emphasis supplied]

9. Regulation 18 of the 1927 Regulation reads as under :-

“18. Audit :-

[1] Save as provided in sub-regulations (2), (3), (4) and (5) of this regulation the annual audit of the accounts of any registered Trade Union shall be conducted by an auditor authorized to audit the accounts of companies under sub-section (1) of Section 144 of the Indian Companies Act, 1913.

[2] Where the membership of a registered Trade Union did not at any time during the year ending on 31st December exceed 2,000, the annual audit of the accounts may be conducted :-

(a) by any examiner of local fund accounts ; or

(b) by any local fund auditor appointed by the Central Government, or

(c) by any person who, having held an appointment under Central Government in any audit or accounts department, is in receipt of a pension of not less than Rs.200/- per mensem.

[3] Where the membership of a registered Trade Union did not at any time during the year ending on the 31st day of December exceed 1,000 the annual audit of the Accounts may be conducted :-

(a) by any two persons holding office as a magistrate or a judge or a councillor of any municipality or member of a district local board or either Chamber of the Provincial or Central Legislature ;

(b) by any person who, having held an appointment under the Central Government in any audit of accounts department, is in receipt of pension from the Central

Government of not less than Rs.75/- a month ; or

(c) by any auditor appointed to conduct the audit of Co-operative Societies by the Provincial Government or by the Registrar of Co-operative Societies or by any Provincial Co-operative Organisation recognized by the Provincial Government for this purpose.

[4] Where the membership of a registered Trade Union did not at any time during the year ending on the 31st December exceed 500, the annual audit of the accounts may be conducted, by any two members of such registered Trade Union.

[5] Where the registered Trade Union is a federation of Trade Unions, and the number of such unions affiliated to it at any time during the year ending on the 31st December did not exceed 50, 15, or 5 respectively, the audit of the accounts of the federation may be conducted as if it had not at any time during the year had membership of more than 2,000, 1,000 or 500, respectively.”

10. Section 144(1) and (2) of the Indian Companies Act, 1913 reads as under :-

“(1) No person shall be appointed or act as an auditor of any company other than a private company [not being the subsidiary company of a public company] unless he holds a certificate from the [Central Government] entitling him to act as an auditor of companies : [Provided that a firm [whereof all the partners practising in India] hold such certificates may be appointed by its firm-name to be auditor of a company, and may act in its

firm-name.]

[2] The [Central Government] may, by notification in the [Official Gazette] and after previous publication, make rules] providing for the grant, renewal or cancellation of such certificates and prescribing conditions and restrictions for such grant, renewal or cancellation : Provided that nothing contained in such rules shall preclude any person from being granted a certificate merely by reason that he does not practise as a public accountant.”

11. Section 22 of the Trade Unions Act, 1926 reads under :-

“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 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.

Explanation : For the purposes of this Section, “unrecognised sector” means any sector which the appropriate Government may, by notification in the Official Gazette, specify.

(2) Save as otherwise provided in sub-section (1), all office-bearers of a registered Trade Union, except not more than one-third of the total number of the office bearers or five, whichever is less, shall be persons actually engaged or employed in the

establishment or industry with which the Trade Union is connected.

Explanation :- For the purposes of this sub-section, an employee who has retired or has been retrenched shall not be construed as outsider for the purpose of holding an office in a Trade Union.

{3) No member of the Council of Ministers or a person holding an office of profit (not being an engagement or employment in an establishment or industry with which the Trade Union is connected), in the Union or a State, shall be a member of the executive or other office-bearer of a registered Trade Union.]

12. It requires no debate that once a registered Union is recognized as a Trade Union, it is catapulted into a role of being the sole bargaining agent in a particular factory. Recognition is never granted by the Industrial Court to a Union *qua* an Industry. It is always granted in relation to a particular establishment as is defined meaning thereby the factory in which the Union represents the workers. The learned Division Bench of this Court in a letters Patent Appeal in the matter of Maharashtra State Road Transport Corporation, Bombay Vs. Maharashtra Motor Kamgar Federation, Nagpur, [1986(1) Bom.CR 126 = 1986 Lab IC 253 = 1986(I) LLN 95] has concluded in paragraph 20, 21 and 22 as under :-

“20. The obligations and rights of the recognised union are set out in [sections 19 and 20](#) of the Act. Amongst other things

conferred on the union recognised under the Act includes the right to collect sums from the members of the union on the premises, to affix notice on the notice board, to hold discussion with the management with regard to any industrial dispute and to appoint nominees or representatives on the works Committee. [Section 22](#), provides for rights of unregistered union which allows their representatives to discuss with the management the grievance of any individual member relating to his discharge, removal, retrenchment, termination of service and suspension etc. and to appear in any domestic inquiry.

21. [Section 26](#) defines "unfair labour practices" to mean any of the practices listed in Schedules II, III and IV. The most vital provision in the Act is contained in [section 27](#) which prohibits the employer, union or employee from engaging in any unfair labour practice. [Section 30](#) provides for powers of the Industrial Court and Labour Court to give declaration and other consequential reliefs including the one relating to cancellation of recognition of a trade union.

22. Long time need was ultimately fulfilled by the enforcement of the Act to permit the workmen to be represented by recognised trade unions in dispute affecting all the employees engaged in an undertaking or industry. Recognised union is given the status of sole bargaining for its employees to the exclusion of all other unrecognised trade unions. The Act further confers rights and obligations on the union recognised under the Act. In these circumstances, the unrecognised union or unions have no right to discharge the obligations or exercise the rights under the Act conferred by [sections 19 and 20](#) of the Act." (Emphasis supplied)

13. The new Union which moved the application before the Industrial Court, laid its thrust on the aspect of Section 19(iv) of the 1971 Act while seeking interim relief u/s 30(2) of the MRTU and PULP Act, 1971. The Industrial Court was, therefore, called upon to investigate at a *prima facie* stage as to whether Clause 17 of the Recognized Union's Constitution was in tune with Section 19(iv) and especially in the light of the view taken by the Hon'ble Apex Court (3 Judges Bench) in the matter of Forbes Forbes Campbell and Co. Ltd., Vs. Engineering Mazdoor Sabha [AIR 1978 SC 340].

14. The Hon'ble Apex Court, in the Forbes judgment (supra) has observed in paragraph No.8 and the portion relevant to the matter in hand is as under :-

“8. Of course, we agree 'that Form A has to be read not rigidly but flexibly and with an amount of latitude. In that sense, substantial compliance will be sufficient. To make our point we may illustrate : supposing within 12 months prior to the application, meetings have been held as required by Section 19(2) but a day or two this side or that, it has tripped that does not disqualify. It is also possible to conceive of other inconsequential deviations. Such minor departures cannot have an invalidatory effect. However, the requirements we are concerned with in the present case are different. The_

Constitution must provide for Government audit. This is mandatory. likewise, the sections of the union must provide for periodical meeting of the Executive Committee in terms of Section 19(2), not meticulously but substantially in terms thereof. The hardship that is pointed out by counsel for the respondent, at the most, operates for one year from the date of the coming into force of the Act and more than that period has already elapsed. So much so we are not impressed that many unions are likely to be handicapped by such a construction as has appealed to us.”
(Emphasis supplied]

15. It is thus required that the Constitution of the Union must provide for Government audit. It appears from the judgment of the Hon'ble Apex Court that Regulation 18 to be read with Section 19(iv) was not cited by any litigating side. Nevertheless, the constitution of the Union must provide for conducting an audit by the Government appointed auditors, as to comply with Section 19(iv).

16. It needs mention that a Union can be recognized after an application is filed under Section 11 and 12 upon completing 6 months of its existence as a registered Union representing the workers in a particular establishment. An audit of the Union therefore may not be possible in a given situation. For example, a

Union is registered in April 2017 and moves an application for recognition in November or December 2017. Unless the financial year is not completed which can either be January to December or April to March, an audit cannot be carried out.

17. What is observed by the Hon'ble Apex Court is that the Constitution must provide for Government Audit meaning thereby that the Constitution must have a clause by which a Government listed / appointed auditor would be auditing the accounts of the Union.

18. Clause 17 of the Constitution of the petitioner Union reads as under :

“मुंबई श्रमिक संघ अधिनियम १९२७ च्या नियम १८ नुसार व्यवस्थापन समितीने नियुक्त केलेल्या सक्षम लेखी परिक्षकांकडून संघटनेच्या हिशोबाची लेखा परीक्षा करण्याबाबत संघटना योग्य ती तरतूद करेल.”

19. The English translation of the said clause would be that the Managing Committee would have the Union's account audited by an auditor who is appointed under Regulation 18 of the 1927 Regulations which means an auditor, who is authorized to audit the accounts of the companies under Sub Section 1 of Section 144 of the

Indian Companies Act, 1913. Section 144(1) provides for an auditor holding the certificate from the Central Government authorising him to act as an auditor of a company. Prima-facie, such an auditor appears to be a Government appointed auditor, unless proved otherwise. It appears from the record that this aspect was not canvassed before the Industrial Court. So also, none of the advocates appearing for the parties before me, have delved upon this issue and none of them have canvassed this issue.

20. Learned Advocate for the recognized Union submits that as is the usual practice with the office of the Trade Unions, a cyclostyled constitution copy available with the office of the Registrar Trade Union is forwarded to the workers as a model Constitution and the same is then accepted as being the constitution of the Union. The intent of the Union is obvious that it was desired that the audit would be conducted by such an auditor as is prescribed by Law. In pursuance to clause 17 of the Constitution, the audit of the Union has been conducted by the auditor who has been approved as a Government Auditor. It is, therefore, canvassed that even if any deficiency is to be searched in clause 17 of the Constitution, the fact that the audit of the Union was conducted by a Government auditor would clearly indicate that the Union did not intend to violate section

19(iv).

21. Mr.Patil learned Advocate for the applicant/Union strenuously submits that the mandate of the Hon'ble Apex Court in the Forbes Case (supra) has to be strictly followed since it must come from the Constitution that the Union has made arrangements for getting their accounts audited by a Government auditor. He further submits that whether the audit of the Union was conducted by a Government auditor or not, is a matter of investigation and evidence.

22. The entire audit reports of the recognized Union are placed on record from page No.68 to 133 of the petition paper book. It is canvassed by the learned Advocate for the recognized Union that the said audit was conducted by a Government auditor. It is quite conspicuous that this aspect has not been dealt with by the Industrial Court. It appears that the Industrial Court was impressed by the contention of the new Union that there is no provision for auditing the recognized Union's Accounts by a Government appointed auditor.

23. It cannot be ignored that the powers, duties and obligations of a recognized Union cannot be casually curtailed unless the Court

forms a strong *prima facie* view that the Union has misrepresented before the Court while seeking recognition. This aspect becomes even more serious when the allegation on the recognized Union is of fraud. To draw a *prima facie* conclusion of this nature, in my view, would require strong convincing evidence even at the *prima facie* stage.

24. It was therefore incumbent upon the applicant / new Union to point out that the audits of the recognized Union were never conducted by a Government appointed auditor. These contentions are not found in the impugned order. The Industrial Court, therefore, should have considered whether the said accounts have been audited by which auditor. It does not appear from the impugned order that this aspect has been gone into though the audit reports of the recognized Union were placed before the Industrial Court, as per the statement of the petitioner's advocate.

25. Considering the fact that the Industrial Court has practically suspended the powers and duties of the recognized Union on the belief that it has not made any provision for appointment of a Government Auditor, on a cursory glance to clause 17. I find that the Industrial Court should have probed into the matter and should have

called upon the parties to indicate as to what was the factual position with regard to the auditing of the recognized Union's accounts. Notwithstanding the fact that both the Unions have not addressed the Industrial Court on this point with better details, the Industrial Court should have gone into this aspect. Learned Advocates for the respective sides do not dispute that this aspect as regards the auditing of the recognized Union's Accounts in each year by Government auditor, has not been dealt with by the Industrial Court. So also, Regulation 18 of the 1927 Regulations and Section 144(1) of the Companies Act, 1913, were not brought to the notice of the Industrial Court.

26. There is one more angle to this litigation and to which I cannot turn a blind eye keeping in view that a new Union seeks to challenge the status of a recognized Union which is granted by the Industrial Court. Section 13 of the 1971 Act and for that reason the entire Act, does not prescribe as to who should file an application for seeking cancellation of the recognition of a Union u/s 13. In this backdrop, any person or any Union alleging that the recognition was obtained by the recognized Union by playing a fraud or mis-representation, needs to prove its *locus-standi*.

27. It requires no debate that in a particular Industrial Sector, Section 22 of the Trade Unions Act speaks about the legal connection between a Union and a particular Industry. Section 22 mandates that 2/3rd of the office bearers of a Trade Union shall be workers actually engaged or employed in an Industry with which a Trade Union is connected.

28. In my view, the Industrial Court, while dealing with the application of the New Union seeking cancellation of recognition under Section 13, should have probed into the aspect of the applicant Union's *locus standi* to seek cancellation of the petitioner's recognition. It appears that the litigating sides have also lost sight of this aspect. Nobody has canvassed this issue. Since Section 13 does not define as to who can move the Industrial Court for seeking cancellation of the recognition, this aspect becomes important since the jurisdiction of the Industrial Court cannot be invoked u/s 13 by any person or Union who is unconnected with the Industry. Notwithstanding the same, the Industrial Court can suo-moto invoke its jurisdiction u/s 13 of the 1971 Act.

29. Mr.Patil has strenuously canvassed that as the impugned order indicates that the main application is expedited to be decided within

5 months and since 3 months are already over, this Court should refrain from interfering with the interlocutory order. Notwithstanding his strenuous submissions, I cannot ignore the fact that the special status bestowed on a Union by the Industrial Court by granting recognition, cannot be curtailed on the basis of conjectures and surmises. It is obvious from the impugned order that clause 17 of the Recognized Union's Constitution was not read in proper perspective. The Industrial Court should have probed into the matter to find out as to whether factually, the accounts of the recognized Union were audited by a Govt. Auditor.

30. It is contended by the learned Advocate for the recognized Union that pursuant to the impugned order dated 12/10/2017, the recognized Union, by way of an abundant precaution, moved the competent authority under the Trade Unions Act and further amended clause 17 of its Constitution thereby providing for an audit by an auditor who is appointed by the State Government. This aspect can be considered by the Industrial Court when it decides the main application which is pending u/s 13.

31. In the light of the above, this petition deserves to be allowed.

32. At this juncture, Mr.Patil strenuously contends that the recognized Union has only about 60 members and about 200 members have now become the members of the new Union. This aspect will have to be considered by the Industrial Court keeping in view the scope of Section 13.

33. Mr.Patil further submits that an irreparable harm and serious prejudice would be caused if the recognized Union signs a new settlement under Section 2(p) r/w 18(3) of the Industrial Disputes Act, 1947. In my view, when the issue of the fall in membership of the recognized Union is yet to be decided by the Industrial Court, a relief or direction of the nature that the recognized Union should not sign a settlement, would be nullifying the sanctity of the status of recognition and especially in the light of the observations of this Court in paragraph No.22 of the MSRTC Case (supra). Moreover, because the membership of the recognized Union may have reduced, would not be enough to cancel its recognition since such membership has to fall below 30% of the total number of employees as per Section 11(1) of the 1971 Act. Even if the contention of the new Union is that it has about 200 members out of 264 members and 64 members are with the recognized Union, *ex-facie*, it becomes a matter of dispute as regards the factual number of membership and the locus-standi of

the new Union in filing the application u/s 13. Without conducting a proper trial, as is expected under Section 13(2), an order of the magnitude of suspension of the rights of the recognized Union will have to be passed sparingly, only when there is a strong prima-facie evidence to pass such an order by way of interim relief.

34. Considering the above, this petition is allowed. The impugned order dated 12/10/2017 is quashed and set aside to the extent of the directions set out in clause 1 of the operative order. Consequentially, the order dated 02/01/2018 rejecting the application for review would become inoperable and would stand set aside. Application Exh.CA-9 is therefore disposed off.

35. The learned Advocates for the litigating sides submit that the main application pending before the Industrial Court can be decided within the remainder period of 2 months. Considering the same, since the Industrial Court itself has expedited the application, the parties are expected to render co-operation to the Industrial Court for such expeditious disposal. While doing so, the Industrial Court would consider (a) the effect of clause 17 of the Constitution of the Recognized Union, before amendment and post amendment, as well as, (b) whether Section 22 of the Trade Unions Act has been duly

complied with by the new Union especially in the light of clause 11 of the Constitution of the new Union which prescribes the total members of the office bearers and the Executive Committee and (c) whether the statement as is made by the recognised Union before me that their accounts were audited by a Govt. auditor, is true or false. Needless to state, if the said statement turns out to be false, the Industrial Court would pass an appropriate punitive order against the recognised Union.

36. Needless to state, the observations of this Court in this order are restricted to the *prima facie* appreciation of the record and to the legality of the impugned orders. The Industrial Court would be at liberty to reject an application for adjournment filed by any litigating sides if it appears to be on the basis of unreasonable and trivial grounds. All contentions of the parties are kept open.

37. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)