

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3218 OF 2018

Hind Kamgar Sanghatana ... Petitioner

Versus

M/s. Excel Industries Ltd. & Ors. ... Respondents

Mr. M. D. Modgi for the Petitioner.
Ms. S. M. Rao for the Respondent No.1.
Mr. Neel Helekar for the Respondent No.3.

**CORAM : R. M. SAVANT AND
NITIN W. SAMBRE, JJ.**

DATE : 23rd OCTOBER 2018.

P.C.

1. The above Writ Petition has been filed challenging the Judgment and Order dated 25th January 2018 passed by the learned Member of the Industrial Court, Thane by which order the Application for recognition filed by the Respondent No.3 came to be allowed and the office of the Court in question was directed to issue Recognition Certificate to the Respondent No.3 under Section 12 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter be referred to as 'MRTU & PULP Act' for the sake of brevity).

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2. The Respondent No.3 is a Trade Union registered under the Trade Unions Act, 1926. The Respondent No.3 is functioning in the Respondent No.1 – Company. The Petitioner herein is the recognized Union in the Respondent No.1 – Company.

3. The Respondent No.3 filed an Application under Section 14 of the MRTU & PULP Act for being recognized as the recognized Union, insofar as the Respondent No.1 – Undertaking is concerned. It was the case of the Respondent No.3 – Union that the membership of the Petitioner has fallen below the minimum requirement for continuous period of six months from the date of the Application. The Respondent No.3 – Union applied for recognition on 6th June 2006 and it is for the preceding six months that the Respondent No.3 claimed that it had the requisite membership for being granted the status of a recognized union.

4. The Petitioner herein appeared in the said proceedings, filed its written statement and denied the claim of the Respondent No.3 that it has got the majority on its side in the Respondent No.1 – Undertaking. It was the case of the Petitioner that it represents the majority of the employees in the Respondent No.1 – Undertaking. It seems that the Petitioner also filed documents in support of its case that it was enjoying a majority since August – 2014.

5. The learned Member of the Industrial Court having regard to the pleadings which had come on record framed two issues namely – *'Whether the Applicant – Union i.e. Respondent No.3 herein has the majority of membership of the employees working in the Respondent No.1 – Undertaking ?'* and secondly *'Whether the Respondent No.3 has duly complied with the provisions of Sections 11, 14 and 19 of the MRTU & PULP Act, 1971 ?'*.

6. The learned Member of the Industrial Court answered both the issues in favour of the Respondent No.3. However, prior to answering the said issues, the learned Member of the Industrial Court appointed an Investigating Officer to verify the documents in respect of the rival claims, on the basis of which, both the Unions were claiming majority of the membership of the employees of the Respondent No.1 – Undertaking. On such investigation, the Investigating Officer held that out of the 507 employees of the Respondent No.1 – Undertaking 408 employees are qualified members. The Industrial Court referred to the 12 receipt books produced by the Respondent No. 3 showing the payment of subscription of membership by the employees of the Respondent No.1 – Undertaking to it. The said receipts were cross checked and ultimately it was found that the Respondent No.3 – Union had 179 valid members out of the 507 workers

of the Respondent No.1 – Undertaking which the Industrial Court found was 33.72% of the total workers of the Respondent No.1 – Undertaking.

7. Insofar as the Petitioner is concerned, the learned Member of the Industrial Court referred to the fact that it had produced receipts in respect of payment of subscription for the period from July 2005 to December 2006, however, inspite of repeated opportunity given by the Investigating Officer, it has failed to produce record of register of membership of its members for the relevant period. The Industrial Court has observed that even during the course of recording of evidence, the Petitioner has failed to establish its link with the receipts filed on record.

8. The learned Member of the Industrial Court came to a conclusion that in the absence of any evidence, the claim of the Petitioner is found to be on the higher side. The Industrial Court also observed that the Respondent No.3 which was the Applicant – Union has not instigated aided or assisted the commencement or continuation of strike during the relevant period or at any time. The constitution of the Union provides for monthly subscription of Rs.10/- each and the Respondent No.3 – Union has brought on record evidence to support the said contention. The Industrial Court had also brought on record the factum of the meetings of the Executive Committee of the Respondent No.3 i.e. the Applicant – Union

being held and thereafter the minutes of the meetings and resolutions passed therein which are maintained in the Minute Books.

9. According to the Industrial Court, Auditor's Report by the Chartered Accountant went on to show that the accounts are maintained by the Respondent No.3 – Union. The Industrial Court observed that the very object of granting recognition to any Union is to avoid mushroom growth of Union and to secure industrial peace. The learned Member of the Industrial Court as can be seen therefore arrived at a satisfaction that the Respondent No.3 i.e. the Applicant – Union had the requisite majority and that the recognition of the Respondent No.3 would fulfill the objects of there being a recognized union.

10. The learned Member of the Industrial Court has thereafter referred to the Judgments cited on behalf of the Petitioner herein and observed that the said Judgments would not come in the way of the court in granting recognition to the Applicant – Union i.e. the Respondent No.3 herein. The learned Member also observed that the Respondent No.3 has complied with all the provisions of the MRTU & PULP Act, 1971 and as indicated above accordingly answered the issue that was framed by him.

11. The learned Counsel appearing for the Petitioner Mr. Modgi

would contend that the subsequent event of the Respondent No.3 having lost the majority which was sought to be brought on record by the Petitioner and in support of which material was also placed by the Petitioner has not been considered by the learned Member of the Industrial Court. It was the submission of Mr. Modgi that it was necessary on the part of the learned Member of the Industrial Court to consider the said material while considering the Application for recognition filed by the Respondent No.3.

12. In support of the said contention, the learned Counsel sought to place reliance on the Judgment of a Division Bench of this Court reported in ***2007(1) Mh.L.J. 761 in the matter of Gireesh U. G. Menon V/s Mumbai Mazdoor Sabha, Mumbai and others***. It has been held in the said Judgment that one of the relevant considerations before the Industrial Court would be to see whether the membership of the Applicant – Union has fallen below the required members before filing the Application. According to the learned Counsel, this observation has been made in paragraph no. 10 of the Judgment (*cited supra*). It was therefore the submission of the learned Counsel that the impugned order is vitiated on the said ground, as such the said aspect has not been considered by the Industrial Court as also the fact that the Industrial Court has not reached a

subjective satisfaction that the recognition of the Respondent No.3 would be in the interest of the workmen.

13. *Per contra*, the learned Counsel appearing for the Respondent No.3 - Union Mr. Helekar would support the impugned order. It was the submission of Mr. Helekar that the Petitioner ought to have filed an Application before the Industrial Court for recognition under Section 14 of the MRTU & PULP Act if it is claiming to have a majority from August 2014, however, such an Application has not been filed till this date. The learned Counsel would contend that the Investigating Officer was only required to go into the aspect whether the Respondent No.3 i.e. Applicant – Union had the members in the preceding six months prior to making the Application.

14. We have heard the learned Counsel for the parties and considered the rival contentions. As indicated above, the Application filed by the Respondent No.3 was one under Section 14 of the MRTU & PULP Act, 1971 for recognition. No doubt, the Petitioner herein was the recognized Union operating in the Respondent No.1 – Undertaking. The Application filed by the Respondent No.3 was sometime in June 2006 and therefore the membership in continuation is for the period of six months prior to the application. We have already referred to in the earlier part of

this order the report of the Investigating Officer. The said report discloses that out of the 507 workers in the Respondent No.1 – Undertaking 179 workers at the relevant time were owing allegiance to the Respondent No.3. It is on the basis of the receipts as also the report of the Investigating Officer that the learned Member of the Industrial Court has recorded a finding of fact as regards the membership of the Respondent No.3 – Union during the relevant time which according to the learned Member is more than 30%.

15. We are unable to accept the contention urged on behalf of the Petitioner that since August 2014 the Petitioner has the majority. It necessarily follows that the Respondent No.3 i.e. the Applicant – Union had lost its majority. Significantly though it is claimed by the Petitioner that it has a majority since August 2014, no application has been filed by the Petitioner- Union invoking section 14 or even an application that the application filed by the Respondent No.3 may not be considered.

16. In the light of the above, the Petitioner cannot be permitted to raise a highly technical plea. As indicated above, the object of granting recognition is to bring certainty in the matter of industrial relations and facilitate collective bargaining so that industrial peace is achieved. The course of action as propounded by the Petitioner if required to be followed

the same would be an antitheses of the object that is sought to be achieved. The learned Member of the Industrial Court having recorded a finding of fact as regards the membership of the Respondent No.3 – Union during the relevant period this Court in its writ jurisdiction under Article 226 of the Constitution of India does not deem it fit to interfere with the impugned order passed by the Industrial Court.

17. The above Writ Petition is accordingly dismissed.

(NITIN W. SAMBRE, J.)

(R. M. SAVANT, J.)