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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3957 OF 2018

Shivkranti Kamgar Sanghatana

...Petitioner

VS

Maharashtra Rajya Rashtriya Kamgar

Sangh (INTUC) And Anr.

...Respondents

.....

Mr. Nitin Kulkarni, a/w. Mr. Avinash Belge, for the Petitioner.

Mr. Prashant P. Kshirsagar, a/w. Mr. Anirudha M. Sanap and Mr. Sanket A. More, i/b. Sarvadnya Legal Associates, for Respondent No.1.

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CORAM : S.C. GUPTA, J.

DATED: JULY 18, 2018

P.C.:

. Heard learned Counsel for the parties.

2. This petition challenges an order passed the Industrial Court at Pune on an application under Sections 11 and 14 of the MRTU and PULP Act, 1971 for registration of a recognized Union in place of the Petitioner Union.

3. It was the case of the first Respondent Union (Applicant Union) that it was a registered trade union under the Trade Unions Act and it had 87% membership in Respondent No.2 Undertaking for the whole period of six calendar months immediately preceding the month in which the application was filed. The Applicant produced a separate list of its members from the employees of the Undertaking. It relied on its

membership register, list of members, receipt books, proceeding books, constitution, annual return, cash book, bank passbook, audit report and registration certificate in support of its application. On the Applicant Union's application, an Investigating Officer was appointed by the Industrial Court in its order below Exhibit U-19 on 1 July 2017. The appointment of the Investigating Officer was challenged by the Petitioner herein before this Court by filing a writ petition (Writ Petition No.525 of 2017). This writ petition was dismissed by a learned Single Judge of this Court. It appears that despite dismissal of their challenge to the appointment of the Investigating Officer, the Petitioner herein remained absent during the course of the investigation, in spite of various notices issued by the Investigating Officer. The Investigating Officer, thereafter, verified the documents submitted by the Applicant Union, including its membership register, list of members, receipt books, proceeding books, constitution, and annual return, cash-book, pass-book, audit report and registration certificate. This entire record was also available before the Industrial Court as part of the Applicant Union's evidence in the application for recognition. The Investigating Officer gave a report concluding that 225 employees of the Undertaking had deposited Rs.65 each as membership subscription with the Applicant Union on 16 October 2015. It is not in dispute that this subscription was for the relevant period, namely, from 1 October 2015 to 30 September 2016. The Court has noted not only the report of the Investigating Officer, but the entire record produced before the Court in support of the Applicant Union's case of 87% membership. The Court has noted that receipts had been issued to the concerned employees for the subscriptions and the amounts were also reflected in the cash-book as also the bank pass-book

of the Applicant Union. Based on this material and also considering the oral evidence tendered by the Applicant Union, the Industrial Court allowed the application. It is important to note that the Petitioner herein did not submit any oral evidence to oppose the application. It merely relied on the annual return of the Applicant Union for the year ending 31 December 2015.

4. The conclusion drawn by the Industrial Court on the application is clearly supported by evidence. No relevant or germane material has been disregarded or irrelevant or non-germane material or circumstance has been considered by this Court to arrive at its conclusion. Learned Counsel for the Petitioner refers to the annual return of the Applicant Union for the year ending 31 December 2015. Learned Counsel submits that though this annual return was before the Court showing that the contributions of the employees of the second Respondent Undertaking were not reflected in the annual return, the Industrial Court disregarded this material and proceeded to pass an order allowing the application. In the first place, the annual return is but one piece of evidence. Secondly, it is not disregarded by the Court. It is, in fact, reflected in the impugned order itself. Thirdly, it is not necessary, as a matter of law, for the subscription received by the Applicant Union for the period from October 2015 to September 2016 to be reflected in its annual return for the year 2015 disclosing subscription fees and donations received for the year. Fourthly, and, at any rate, this material, namely, the annual report, may at best be one pointer in support of the Petitioner's case. It is not a clinching piece of evidence. In the face of this piece of evidence, the Court has also to consider the overwhelming

evidence before it in support of the Applicant Union's case that it had membership of over 87% employees of the second Respondent Undertaking. This evidence, in the form of its membership register, list of members, receipt books, proceeding books, cashbook, bank passbook and audit report, was not only before the Court and seen by it, but also scrutinized by an Investigating Officer appointed by it. If, in the face of all this evidence, the Court concludes that the Applicant Union's case of membership of over 70% of the employees of the Undertaking is made out, surely it cannot be said to be a perverse conclusion.

5. In the premises, there is no merit in the petition. The petition is dismissed.

6. The application of the first Respondent for stay of this order is refused.

Smita
Johnson
Gonsalves

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(S.C. GUPTE, J.)