

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.6103 OF 2018

M/s Prabhat Dairy Ltd

And Others

... Petitioners

Versus

Konkan Shramik Sangh

... Respondent

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Mr. T. Prabhakaran I/b Mr. Rakesh Reddy for the Petitioners.

Mr. K.S. Bapat I/b Mr. Avinash Fatangare for the Respondent.

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CORAM : S.C.GUPTE, J.

DATE : 25 JUNE 2018

(Judgment)

. This petition challenges an order passed by the Industrial Court at Thane on a complaint of unfair labour practices under the Maharashtra Recognition of Trade Unions And Unfair Labour Practices Act, 1971 (“Act”). The impugned order allows the Respondent's complaint and sets aside orders of transfer issued to six concerned workmen on 3 April 2017. The impugned order is challenged only on the ground of want of locus on the part of the Respondent union to represent the case of individual employees of the Petitioner-company.

2 On 3 April 2017, the Petitioners transferred six security guards employed by them. These transfer orders were challenged before the Industrial Court at Thane by the Respondent-union under Section 28 read with Item Nos.3 and 9 of Schedule IV of the Act. The Petitioners challenged the *locus-standi* of the Respondent-union on the ground that it was not a

union within the meaning of Section 3(17) read with Section 22 of the Trade Unions Act, 1926. The Industrial Court by its impugned order rejected the Petitioners' objection on the ground of *locus-standi* of the complainant-union and quashed the transfer orders by allowing the complaint. That order, as noted above, is challenged only on the ground of the Respondent not fulfilling the character of “union” within the meaning of Section 3(17) of the Act.

3 The submission of learned Counsel for the Petitioners is that under Section 3(17) of the Act, “union” means a trade union of employees, which is registered under the Trade Unions Act. Learned Counsel submits that a trade union can be registered under the Trade Unions Act subject to certain conditions, such as minimum requirement about membership of the trade union under Section 9A of that Act and proportionate number of office bearers to be connected with the particular industry under Section 22 of that Act. Learned Counsel submits that a registered trade union is required to have, at all times, not less than ten per cent or one hundred of workmen, whichever is less, subject to a minimum of seven, engaged or employed in the establishment or industry, with which it is connected, as its members. Learned Counsel also submits that not less than one-half of the total number of office-bearers of every registered Trade Union in an unrecognised sector shall be persons actually engaged or employed in the industry with which the trade union is connected, and save as otherwise provided under sub-section (1) of Section 22, all office-bearers of a registered trade union, save and 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. Learned Counsel submits that in the present case not only was the union not formed by the workmen employed with the Petitioners but that the application for registration was not made on behalf of any of the Petitioners' workmen and neither the minimum number of required members nor the proportion of office-bearers are from the Petitioners' industry. Learned Counsel, in the premises, submits that the Respondent does not fulfill representative character of a union within the meaning of the Act and cannot espouse the cause of employees with whom we are concerned in the present complaint.

4 The right of the union to appear and act in proceedings relating to unfair labour practices concerning employees of an industry is recognized by the Act. The Act defines “union” in Section 3(17) to mean a trade union of employees, which is registered under the Trade Unions Act, 1926. Trade Unions Act, in turn, defines “trade union” under Section 2(h) thereof to mean any combination, whether temporary or permanent, formed primarily for the purpose of regulating relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions. The Trade Unions Act contains provisions for registration of a trade union. Any seven or more members of a trade union may, by subscribing their names to the rules of the trade union and by otherwise complying with the provisions of that Act with respect to registration, apply for registration of the trade union under the Act. No trade union is registered, however, unless at least ten per cent or one hundred of workmen, whichever is less, engaged or employed in the establishment or industry with which it is

connected, are members of such trade union on the date of making of the application for registration. The registered trade union of workmen is required, at all times, to continue to have not less than ten per cent or one hundred of the workmen, whichever is less, subject to minimum of seven, engaged or employed in the establishment or industry in which it is connected as its members. Sub-section (1) of Section 22 provides that not less than one-half of the total number of the office-bearers of every registered trade union in an unrecognised sector shall be persons actually engaged or employed in the industry with which the trade union is connected. Save as otherwise provided, 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. It is to be noted that these provisions reflect either on the requirements for registration of a union or its continued existence as a registered union under the Trade Unions Act.

5 With these provisions of the Trade Unions Act in view, let us now turn to the definition of “union” under the MRTU & PULP Act. As noticed above, definition of “union” under Section 3(17) of the Act envisages two requirements. Firstly, it must be a trade union of employees and secondly, it must be registered under Trade Unions Act. The MRTU & PULP Act does not define a trade union. We may, therefore, conveniently consider the definition of “trade union” under the Trade Unions Act. As noticed above, “trade union” under the Trade Unions Act means *“any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between*

workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions.” The union, for the purposes of the Act, must accordingly fulfill its character of a combination formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers. The Respondent union, in the present case, does fulfill the first requirement of a union under the Act, namely, its character as a trade union of employees. It is nobody's case that the Respondent-union is not registered under the Trade Unions Act. If that is so, it fulfills even the second requirement of a union within the meaning of Section 3(17) of the Act.

6 The submissions of learned Counsel for the Petitioners reflect more on permissibility of registering the Respondent as a “trade union” under the Trade Unions Act and its continued existence as a registered trade union under that Act. These considerations are not relevant or germane for the purpose of deciding whether the union such as the Respondent herein, which fulfills the definition of a trade union under Section 2(h) of the Trade Unions Act with a subsisting registration under that Act, can be termed as a union under Section 3(17) of the MRTU & PULP Act. The industrial adjudicator hearing the complaint of unfair labour practices under that Act is neither expected nor enjoined to go beyond either the registration of a trade union or its continued existence as a registered trade union under the Trade Unions Act. These are entirely different matters, to be agitated under different proceedings and before different fora.

7 Accordingly, there is merit in the Petitioners' petition. The representative character of the Respondent union to espouse the cause of the employees of the Petitioners, is not in doubt. It is an admitted position that all employees of the Petitioners including the concerned employees are members of the Respondent-union.

8 Learned Counsel for the Petitioners relies on the Supreme Court judgement in **Escorts Employees Union Vs. State of Haryana**¹ as also a judgement of our Court in the case of **F. Rehman Vs. M/s Babson & Company**². In these cases, the unions before the court were not even remotely connected with the establishment or industry concerned. The appellant before the court in **Escorts Employees Union** case was a registered union. The controversy in the matter pertained to a certain rule in its constitution which was sought to be amended by it. The existing rule permitted any workman employed in the Escorts group to become a member of the union, such membership terminating automatically after his leaving the group. The new or proposed rule reserved liberty to any workman to become its member if he was employed in an industry originally established by the Escorts Group of Industries and such membership could continue till his lawful retirement or resignation. An explanation was added to the new rule that the membership would not be affected either by change of name of the industry or transfer of its management. The change of rule proposed by the union was declined by the Registrar on the ground *inter alia* that under the proposed rule, read with the explanation, workmen originally employed in the Escorts Group could continue to remain members of the union despite their ceasing to

1 LPA No.568-15, date of decision 20.04.2015.

2 1982-II-LLJ-120

have commonness of interest with other workers of the Escorts Group after segregation of the industry (in which they were originally employees) from Escorts Group. The union came in challenge from that order before the Court. It was the case of the union that as per the provisions of the Industrial Disputes Act as also Trade Unions Act, it is the priority and privilege of the union to have membership for any kind of Industries and the Registrar/Assistant Registrar has very limited right to interfere with the internal working of a trade union. In this context, after considering Sections 2(g) and (h) and Sections 6, 9A and 22 of the Trade Unions Act, the court held that the statutory scheme required direct connectivity between the industry where the worker or employee was engaged and the trade union in which such worker or employee was a member. The existence of commonness and relationship was, in other words, a *sine qua non* for constituting a trade union or enrolling its members and office bearers. What the court held, thus, was that there could not be any trade union for collective bargaining in a trade dispute, where the trade union is not connected at all with the industry. In **Babson & Company's** case (supra) also, a complaint of unfair labour practices was filed by a union who admittedly had no connection whatsoever with the establishment of the respondents. The argument of the union, however, was that under Section 28(1) of the MRTU & PULP Act, 1971, complaint could be filed by “any union” and therefore the complainant had a *locus standi*. The court negated this contention and held that the words “any union” appearing in Section 28(1) of the Act meant a union of the employees employed in a particular industry and not any union whatsoever under the wide sky. The ratio of these decisions hardly has any bearing on the controversy in the present case. As noted above, in the present case, the union perfectly

fulfills its representative character as regards the employees of the establishment or industry with which we are concerned here. The employees of the Petitioners are admittedly members of the Respondent union, and the latter, being a combination for the purpose of regulating the relations between the employees and their employer and registered under the Trade Unions Act, by no stretch of imagination could be termed or reckoned as a wholly unconnected union. The judgements thus have no bearing on the facts of our case and are inapplicable.

9 In the premises, there is no merit in the challenge. The Petition is, accordingly, dismissed. No order as to costs.

10 At the request of the Petitioners, learned Counsel for the Respondent agrees to continue his ad-interim statement recorded in the order dated 10 May 2018 for a period of four weeks from today.

(S.C. GUPTE, J.)