

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12240 OF 2017

Bharat Jijaba Shinde .. Petitioner

Vs.

Bharatiya Kamgar Sena .. Respondent

Mr.Sanjay Singhvi, Senior Advocate with Mr.Rahul Kamerkar for the petitioner.

Mr.Kiran Bapat with Mr.Avinash H. Fatangare for the respondent.

CORAM : A.K. MENON, J.

RESERVED ON : 20TH MARCH, 2018

PRONOUNCED ON . 3RD MAY, 2018.

JUDGMENT :

1. By this petition, the petitioner – workman challenges the impugned order dated 21st June, 2017 passed by the Industrial Court, Pune in Complaint (ULP) No.83 of 2016 whereby the petitioner sought interim relief pending disposal of an unfair labour practice complaint. The impugned order records that in the main complaint, the workman had claimed a declaration of unfair labour practice and sought cancellation of recognition of the respondent Union. The interim relief sought was suspension of recognition of Union. The impugned order records that cancellation of recognition could be sought under Section 13 of MRTU and PULP Act, 1971 and can only be filed by the Union. The maintainability of the complaint was

challenged by an individual workman. In the instant case the unfair labour practice alleged was under Item 3 of Schedule III of the MRTU & PULP Act, namely, for recognised Union refusing to bargain collectively in good faith with the employer. It was case of the respondent – Union that such a complaint could only be filed by the employer but the Court found that there was nothing to show that such complaint could be filed only by an employer.

2. In the case at hand the respondent-Union claimed to represent workmen of Force Motors Ltd. as a recognised Union and it had signed settlement with the company. The petitioners grievance was that many employees had resigned from the respondent-Union in December 2002 and joined the Poona Employees Union. There was some litigation pending regarding Union membership filed by the respondent and in the meanwhile Poona Employees Union filed proceedings before the Industrial Court for derecognition. The Industrial Court cancelled recognition of the respondent Union and recognised Poona Employees Union. This was challenged in the High Court, which set aside the order of the Industrial Court and restored recognition of the respondent. Poona Employees Union then challenged this order in the Supreme Court which SLP came to be dismissed.

3. On the substance of complaint it transpires that the employees claiming to be in majority appointed representatives and submitted a

Charter of demands which resulted in Reference (ID) No.6 of 2013. The petitioner complainant contended that the complaint was filed on behalf of 309 out of 400 employees and that he and a majority of the employees have left the respondent-Union in the year 2002. The impugned order at Exhibit-U-2 seeking interim relief came to be rejected by the Industrial Court relying upon a decision of the High Court in the case *Fashion Production Mazdoor Sabha, Bombay Vs. Smt.Smita Prabhakar Dalvi & Ors. 1985 (51) FLR Page 542. Bom.*

4. In the meantime a preliminary issue came to be framed at the instance of the respondent. After hearing both parties the Court found that the main contention in the complaint was that the issue of maintainability has already been decided when the application for interim relief Exhibit-U-2 was decided. The Court found that the order of maintainability was only by way of a prima facie finding. The preliminary issue came to be decided on 19th July, 2012 holding that the Court had no jurisdiction to try the complaint under Section 28(1) of the MRTU & PULP Act. Both parties did not lead evidence.

5. Mr.Singhvi, learned Senior Advocate appearing on behalf of the petitioner contended that out of 400 workers presently working at Force Motors Ltd., 309 have signed the resolution authorising the petitioner's Union to represent them. The complaint was filed by one person representing 309 workers. The petition was filed by the petitioner for self

and on behalf of 309 workers. He submitted that in March 2001 the respondent-Union signed settlement resulting in reduction of salary. In December 2002 a majority of employees left the respondent Union and joined Poona Employees Union leading to recognition being granted by the Industrial Court only to be set aside by this Court which order was upheld by the Supreme Court. That reference was filed by 605 workers then on the roll of the company.

6. In February, 2013, the reference was made and sent for adjudication after consultation with Law and Judiciary department. In August 2013, both company and the Union filed a petition challenging the reference. This Court allowed reference to proceed. Thereafter a joint application came to be filed by the company and the respondent claiming a settlement on 4th April, 2016. Pursuant to this, in April 2016 the petitioner filed Complaint (ULP) No.83 of 2016 for self and 309 workers claiming unfair labour practice under Schedule III and seeking setting aside of the recognition under Section 30(1)(c).

7. Mr.Singhvi submitted that an application under Section 30(1)(c) is an independent application and distinct from an application contemplated under Section 11 and/or 13. That Chapter VII of MRTU & PULP Act provides for the powers of the Industrial and Labour Courts and where the Court decides that any person named in the complaint has engaged in unfair labour practice and where recognised Union has engaged

or engaging in unfair labour practice, it may direct that itself recognition may be cancelled or its rights suspended. On a query from the Court as to whether this power would be normally exercised on the application of the employer, Mr.Singhvi submitted that it was not necessarily to be exercised by the employer and that an employee also was also entitled to do so and Section 30 merely empowered the Court to pass appropriate orders. He therefore submitted that the impugned order rejecting the application of the petitioner on maintainability was bad in law.

8. According to Mr.Singhvi the Industrial Court failed to consider that the order dated 21st April, 2016 passed on the interim application, the Court had not found merit in the argument of the respondent, that the petitioner could not seek relief under Section 30(1)(c) and that under Schedule III read with Section 30(1)(c) demonstrates that there is nothing to prevent the establishment from filing the complaint seeking derecognition under Section 30(1)(c). It was also contended that by Mr.Singhvi that the judgment in Fashion Production Mazdoor Sabha (supra) relates to recognition of trade Unions and not prevention of unfair labour practice which is also contemplated by the Act.

9. It was further contended that the ratio in Fashion Production Mazdoor Sabha (supra) dealt with a situation where an individual or a small group of workmen sought derecognition which would have resulted in absurd consequences. It was submitted that the decision would not be

binding on this Court in case where 80% of the workmen (309 out of 400) seeks derecognition of the respondent. He therefore submitted that the impugned order be set aside. He submitted that the impugned order is illogical and would result any recognised Union with no membership of workers and office bearers who are not employed would be able to engage in unfair labour practice unless workmen of the establishment are found. The petition alleges violation of Article 19 (1)(c) restricting freedom to form an association.

10. Mr.Bapat opposes the petition on the basis of the judgment of very case in Force Motors Ltd. passed by this Court on 2nd February, 2009. He relied upon the fact that the High Court had found that the order of the Industrial Court cancelling the status of recognised Union was not sustainable. The Court held that the purpose for which the respondent Union (Poona Employees Union) was established was not mentioned and therefore it was not recognised under Section 11 of the Act. The Division Bench of this Court also held that it was not proper to draw conclusions about membership of the respondent Union on the basis of affidavits and that the onus was upon Poona Employees Union to establish that the respondent in the present case - Bhartiya Kamgar Sena had lost its representative character within the meaning of Section 11 of the Act and on that basis the Court had set aside the order of the Industrial Court. This judgment has attained finality upon dismissal of Civil Appeal No.10130-31 of 2010 by

the Supreme Court *Poona Employees Union vs. Force Motors Ltd. and Anr.*¹ Relying upon paragraph 50 of the Judgment Mr.Bapat pointed out that on a conjoint reading the Supreme Court held in respect of Section 19 and Section 30 of MRTU & PULP Act that it was clear that the exercise of examining an application of a Union in an undertaking seeking the status of recognised union whether by replacing an existing union or not, is neither a routine ritual nor an idle formality. The union applying has to be eligible to apply with regard to the extent of membership it has at its command for the relevant period. It must not have indulged in any activity of instigating or aiding or assisting, the commencing of a strike and having examined the case thoroughly the Supreme Court held that view of the High Court was based on a logical analysis of the material on record.

11. Mr.Bapat also relied upon a decision of a Single Judge of this Court in *Fashion Production Mazdoor Sabha (supra)* in which the question considered was whether an individual employee or employees can initiate proceedings for cancellation of recognition of a union under Section 13 of the MRTU & PULP Act. This Court held that intention of the legislature was clear, that an individual employee had no role to play in the matter of some proceedings. Initiation of proceedings by individual employee under Section 13 was not contemplated by the legislature and that this is clear from the very object sought to be achieved by the Act. The Court held that apart from the disquieting feature of trade union leadership issue there is

¹ (2016) 2 SCC 531

also a problem of multiple rival unionism. Intra-union and inter-union rivalry has an evil effect on healthy trade union activities, adversely affecting the process of collective bargaining and it was held that every employee did not have right to make application for cancellation of trade union.

12. Having considered the submissions of counsel it is necessary that reference be made to relevant provisions of the Act which are as under :

“Section 3(13) “recognised union” means a union which has been issued a certificate of recognition under Chapter III”

Section 3(17) “union” means a trade union of employees, which is registered under the Trade Unions Act, 1926.

Section 5 : Duties of Industrial Court :- It shall be the duty of the Industrial Court

(a)

(b)

(c) to decide an application from another union or an employer for labour practices falling in item 1 of Schedule IV.

(d)

(e) to assign work, and to give directions, to the Investigating

Officers in matters of verification of membership of unions, and investigation of complaints relating to unfair labour practices”.

13. Chapter III covering Section 10 to Section 18 exclusively deals with recognition of unions. Section 10 clarifies that Chapter III will apply to every undertaking, wherein fifty or more employees are employed, or were employed on any day of the preceding twelve months. Section 11 provides for Applications for recognition of union. Section 12 deals with the procedure on receipt of an application from a union for recognition under Section 11, after following process of inviting objections under Section 12(2). After holding an enquiry in the matter, if the Industrial Court comes to the conclusion that the conditions requisite for registration specified in Section 11 are satisfied and that the applicant-union complies with the conditions specified in Section 19 of the Act, the Industrial Court shall, subject to the provisions of Section 12, grant recognition to the applicant-union under the Act and issue a certificate of recognition as may be prescribed. Section 13 to 18 come into play only upon recognition granted to any union and subject to disqualifications specified. Section 13 provides for Cancellation of recognition and suspension of rights. It would be appropriate to reproduce Section 13 for ease of reference :

“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.”

14. Section 14 deals with procedure to be followed if any union makes an application for being recognised as a registered union in place of a recognised union already registered. It provides for the “recognised union” for an undertaking on the ground that the recognised union has the largest membership of employees employed in such undertaking and two years has elapsed since the date of registration of the recognised union, the Industrial Court shall be empowered to call upon the recognised union by issuing a notice, as to why the union now applying should not be recognised in its place. In the instant case this eventuality has not occasioned.

15. Section 15 provides for application for re-recognition of union

whose recognition has been cancelled on the ground that it was recognised under a mistake or membership of the union has fallen below the minimum required under section 11 for its recognition. These are relevant provisions pertaining to recognition, suspension of one recognised union by another subject to compliance of Section 14 and re-recognition of union which has lost recognition either due to cancellation or due to non compliance.

16. Chapter VII provides generally for the powers of the Industrial and Labour Courts. It is well settled that when there is specific provision in an Act, general provisions such as those under Chapter VII have to be read in consonance with specific provisions of the Act as observed by the Supreme Court in the case of Poona Employees Union (supra).

17. Chapter VII deals with the powers of the Court contemplating various situations such as non-appearance of the parties, decision in connected matters, making and framing of regulations, execution of orders, authorisation of the Officers of the State Government to appear in any proceedings and powers of the Investigating Officers. Section 30(1)(c) under which the petitioner now claims is reproduced below :

“30. Powers of Industrial and Labour Courts :-

(1) Where a Court decides that any person named in the complaint has engaged in, or is, engaging in, any unfair labour practice, it may in its order :-

(a)

(b)

(c) *where a recognised union has engaged in or is engaging in any unfair labour practice, direct that its recognition shall be cancelled or that all or any of its rights under sub-section (1) of Section 20 or its right under Section 23 shall be suspended."*

18. These are the provisions which empowers the Court to pass an order to direct that recognised union has engaged in or is engaging in any unfair labour practice or direct its recognition to be cancelled or its right under Section 20(1) and 20(3) to be suspended. These are sections which empowers the Court to pass appropriate orders in matters to correct the behaviour of the recognised union should it engage in any unfair labour practice and for that purpose the finding that union has engaged in unfair labour practice is sine qua non. In such cases if a recognised union has engaged in unfair labour practice or is engaging in unfair labour practice can only be a cause for the employer to aggrieved.

19. Section 30 is the source of power of the Industrial and Labour Courts to act under Section 13. That any action seeking cancellation/ recognition is prerogative of the Industrial Court after following the

provisions of Section 13. That Section 30(1)(c) empowers the Industrial Court to direct cancellation of the recognition or suspension of any of its rights will not entitle the Industrial Court to proceed to consider an application and issue directions apropos cancellation or recognition or suspension of rights dehors of section 13. It is well known that the statute must be read as a whole and in its context. To quote Lord Davey "Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible to make a consistent enactment of the whole statute". Thus, to ascertain meaning of the statute, one must look at the entire statute and not merely a clause. The Courts must, therefore, reject that construction which will defeat the plain intention of the legislature. I am therefore of the view that the powers of the Industrial Court and Labour Courts under Section 30(1)(c) is merely the an empowering provision to enable the court to put into effect the machinery provisions of the Act. It is not a separate power vested with the Industrial and Labour Courts to follow different procedure for cancellation of recognition or suspension of rights. It is not possible therefore to accept Mr.Singhvi's contention that Section 30(1)(c) can be invoked to seek specific relief contemplated in Chapter III. In my view, the impugned order demonstrates no perversity and there is no substance in the present challenge mounted by the petitioner by attributing to the Industrial Court, a separate jurisdiction independent of Section 13 of the Act. For the aforesaid reasons, the order of

Industrial Court is upheld. The petition has no merit and the challenge fails.

Hence I pass the following order :

(a) Writ Petition is dismissed.

(b) No order as to costs.

(A.K. MENON,J.)