

grant recognition to the applicant-union in place of Mumbai Mazdoor Sabha, the recognised union.

4. The petitioner No.1 filed written statement at Exhibit-U-2 on 14th August, 2013. Thereafter, on 20th December, 2017 the petitioner filed application Exhibit-UA-8 for amending its written statement dated 14th August, 2013. In the said application it was pointed out that they want to raise plea that it is not an 'Industry' as per Section 2(j) of the Industrial Disputes Act, 1947 and Section 3(7) of the MRTU & PULP Act. It was therefore prayed that the petitioner be allowed to amend the written statement dated 14th August, 2013 by adding paragraphs 2 to 5 as mentioned in the said application, which is mainly pertaining to the issue that petitioner is not an 'Industry'. This application was opposed by respondent No.1.

5. By the impugned order dated 13th August, 2018, the Industrial Court rejected the application on the ground that the said plea is already taken by the petitioner in another proceeding bearing Complaint (ULP) No.447 of 2012. The Industrial Court did not accept the explanation offered by the petitioner that such a plea was taken in another proceeding and therefore the petitioner did not raise this plea earlier as both the matters were to be heard together.

6. Learned Counsel for respondent No.1 vehemently opposed this petition. He invited my attention to the order dated 15th December, 2005 passed in another proceeding being Application (MRTU) No. 1 of 2004, in which a specific objection was taken that the petitioner is not an 'Industry'. In the said order, it is observed that, no evidence has been adduced nor any submission was advanced in support of the contentions. In this view of the matter learned Counsel would submit that, no useful purpose would be served by allowing the petitioner to raise this plea repeatedly. He moreover submits that the plea is raised belatedly.

7. I have heard the learned Counsel for the parties.

8. During the course of hearing, it is pointed out that the issues are yet to be framed by the Industrial Court. The petitioner has raised a plea that it is not an 'Industry'. In the earlier proceedings, viz; Application (MRTU) No.1 of 2004, no doubt the plea that the petitioner is not an 'Industry' was raised. However, the petitioner did not adduce any evidence nor made any submission in support of the contentions. The petitioner by seeking amendment to the written statement has now chosen to raise the plea that it is not an 'Industry'.

9. In my opinion, the plea that the petitioner is not an 'Industry' though raised belatedly did not deserve an outright rejection at this stage. The issues are yet to be framed. Even according to the respondent No.1 the petitioner has raised this plea in the connected complaint. In this view of the matter, no prejudice will be caused if the petitioner is allowed to amend the written statement. The respondents would be at liberty to raise all objections including the objection regarding the impact of the order dated 15th December, 2005 passed in Application (MRTU) No. 1 of 2004 when this issue is decided on merits.

10. Keeping all the contentions of the parties open, the present petition is allowed in terms of prayer clause (a). Amendment to be carried out within a period of two weeks from the date on which this order is uploaded. Needless to mention, if a request is made by the respondent no.1 to expedite the proceedings before the Industrial Court, the Industrial Court may consider the same on its own merits.

11. The writ petition is allowed. Rule is made absolute with no order as to costs.

(M. S. KARNIK, J.)

This order is corrected as per Court's order dated 20th March, 2019.