

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

**WRIT PETITION NO.5917 of 2012
WITH
CIVIL APPLICATION (STAMP) NO.29696 OF 2018**

Hind Kamgar Sanghatana
Nalawade Building, Near Maruti Mandir,
Kharalwadi, Pimpri,
Pune - 411 018

Through Secretary Yashwant Supekar ... Petitioner

Versus

1. Dai-Ichi Karkaria Ltd.
Mumbai-Pune Road,
Kasarwadi, Pune - 411 034

2. Dai-Ichi Kamgar Sanghatana
Mumbai-Pune Road,
Kasarwadi, Pune - 411 034 ... Respondents

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Mr. M.D. Modgi for the Petitioner and Applicant.
Mr. Sudhir Talsania, Senior Counsel a/w Ms. Sneha Jaisingh a/w
Mr. Pratik Singhvi I/b. Bharucha & Partners for respondent
No.1.
Mr. Kiran Bapat i/b. Mr. Avinash H. Fatangare for respondent
No.2.
Mr. Milan S. Topkar for Applicant (Intervenor) in CAW(St.)
No.29696/18.

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CORAM : M. S. KARNIK, J.

DATE : 18th APRIL, 2019.

Oral Judgment:

1. **Rule.** Rule is made returnable forthwith by consent
and heard finally.

2. By invoking the Jurisdiction of this Court under Article 226 and 227 of the Constitution of India, the Petitioner-original second party challenges the award dated 12.03.2012 of the Industrial Tribunal, Pune rejecting Reference (I.T.) No.19 of 2010. The reference was rejected by the Industrial Court on the ground that the same was not prosecuted by recognised Union.

3. Before remand by the Apex Court, when the matter came up for admission before this Court on 10.07.2013, this Court dismissed the Writ Petition thereby upholding the order of the Industrial Tribunal. The petitioner challenged this order before the Supreme Court. Their Lordships vide order dated 18.07.2017 were pleased to remit the matter back to this Court observing thus :-

“1. Leave granted.

2. The appellant is before this Court, aggrieved by the impugned judgment, whereby the order passed by the Industrial Tribunal, Pune, has been upheld. The Tribunal has taken a view that since the appellant was not a recognised union under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, at their instance, the Reference could not be answered. Reliance has been placed on the first proviso to [Section 36](#) of the Industrial Disputes Act, 1947, as applicable to the State of Maharashtra.

3. The learned senior counsel appearing for the appellant has brought to our notice that there is no recognised union under the first respondent since the registration under the [Trade Unions Act](#) granted to the second respondent has been cancelled. The learned counsel for the second respondent submits that the issue is pending before the appellate authority. Be that as it may, as rightly pointed out by Sh. C. U. Singh, learned senior counsel, that this issue has not been adjudicated before the High Court. At any rate, the High Court has not gone into the issue, apparently because according to the learned senior counsel, this point was not canvassed before the High Court. Though there are serious disputes as to whether this point was canvassed or not, we find that this was one of the issues raised even before the Industrial Tribunal and the point is seen raised in the High Court as well. Though normally, the court would have relegated the appellant to pursue the remedy of review, we do not propose to do so since the matter was pending for the last four years. Hence, we are of the view that the matter needs to be sent back to the High Court.

4. Accordingly, without expressing any opinion on the merits of the issue raised before this Court by the appellant on the recognition/registration aspect of the unions, we set aside the Judgment and remit the matter to the High Court with a request to the High Court to hear the parties afresh and decide on the point, as to what happens in case there is no recognised union available in an establishment. We also make it clear that the High Court may also go into other questions as to what happens when there is a registered union under the Trade Unions Act. Since the writ petition is of the year 2012, we request the High Court to dispose of the writ petition expeditiously and preferably, within six months from the date of production of a copy of this judgment.

5. We also make it clear that the contentions advanced by the learned counsel for the second respondent that their recognition continues despite cancellation of registration is also kept open, to be argued before the High Court.

6. We further make it clear that it will be open to the applicant-union in I.A. 3 of 2016 to approach the High Court for impleadment.

7. With the above observations and directions, this appeal is disposed of.”

4. Brief facts necessary to appreciate the controversy are thus :-

The Additional Commissioner of Labour, Pune Division, Pune in exercise of powers conferred under Section 12 (5) and 39 (b) of the Industrial Disputes Act, 1947 (for short “the I.D. Act”) made Reference on 07.12.2010 which reads as under :-

“Whether the employees employed in the M/s. Dai-Ichi Karkaria Limited, Bombay-Pune Highway Kasarwadi, Pune are entitled for the increase in the allowances, wages and other benefits and at what rate?”

The Industrial Tribunal dismissed the said reference on the ground that the same was not prosecuted by the recognised Union.

5. There is no dispute that there was a recognised Union viz. respondent No.2, existing in respondent No.1-Company. For grant of this recognition, the respondent No.2 Union made an application to the Industrial Court, Pune for recognition under the Maharashtra Recognition of Trade

Unions and Prevention of Unfair Labour Practices Act, 1971 (hereafter referred to as “MRTU Act” for short). The certificate to that effect was granted on 08.09.2007 as a recognised Union under the MRTU Act.

6. Learned counsel for the petitioner submitted that respondent No.2 ought to have taken steps to pursue the charter of demands on behalf of the employees. However, the recognised Union took no steps to pursue the charter of demands. This was against the interest of the employees and employees were seriously prejudiced due to this. It is in this light of the matter that the majority of the employees came together and formed the petitioner Sanghatana to support the cause of the employees and take the charter of demands to its logical conclusion.

7. It is further their case that the workmen held a meeting on 27.08.2009 in which they claimed to have passed a Resolution dissolving the respondent No.2 recognised Union and they also claimed to have joined the petitioner-Hind Kamgar Sanghatana. The Petitioner Sanghatana by its letter dated 28.12.2009 informed the respondent No.1 that the registration of the said respondent No.2 recognised Union was cancelled by the Registrar of Trade Union by order dated

09.12.2009 and therefore respondent No.2 is no more a 'Recognised Union'. The petitioner Sanghatana claimed that it was adopting the charter of demands as submitted by the recognised Union.

8. Learned counsel for the petitioner would submit that the petitioner is a Trade Union registered under the Trade Unions Act, 1926 ('Trade Unions Act' for short). He pointed out that the petitioner had applied under Section 14 of the MRTU Act for recognition of the petitioner Union in place of respondent No.2-Union.

9. Learned counsel for the petitioner would submit that the registration of the respondent No.2-Union under the Trade Unions Act was cancelled on 09.12.2009. According to him, as the registration of the respondent No.2 is cancelled, the respondent No.2 cannot function as a recognised Union under the provisions of the MRTU Act.

10. Learned counsel for the petitioner would then invite my attention to the application M.R.T.U. No.3 of 2011 made by the petitioner under Section 14 of the MRTU Act for recognition which was filed on 28.01.2011. It is now pointed

out that the said application came to be dismissed on 07.11.2017 during the pendency of this petition.

11. The petitioner having filed application M.R.T.U. No.3 of 2011 for de-recognition of the respondent No.2 recognised Union before the Industrial Court, Pune under the MRTU Act, it is therefore the contention of respondent Nos.1 and 2 that till the Industrial Court finally decides M.R.T.U. No.3 of 2011, the respondent No.2 Kamgar Sanghatana continues to be a recognised Union. An objection was therefore raised before the Industrial Tribunal by the respondent No.1 management that as per the first proviso of Section 36 of the I.D. Act of 1947, only the recognised Union can represent the cause of the employees before the Industrial Court. The application made by petitioner was opposed by respondents on the ground of locus as it is not a recognised Union.

12. The petitioner-Sanghatana pointed out that the registration of the respondent No.2 under the Trade Unions Act was cancelled as per order dated 09.01.2009. It was therefore, submitted that as majority workmen had passed the Resolution on 27.08.2009 dissolving the recognised Union,

they are justified in making the said reference as they now represent the majority of the employees.

13. The Industrial Court by the impugned order dismissed the reference as not maintainable on the ground of locus for want of prosecution by the recognised Union.

14. Learned counsel for the petitioner, Shri Modgi, assailing the order passed by the Industrial Court would submit that the Industrial Tribunal was not justified in rejecting the reference for want of prosecution by the recognised Union. He would submit that the registration of the respondent No.2 recognised Union was cancelled under the Trade Unions Act, 1926 and therefore having regard to the provisions of the I. D. Act, 1947 and the MRTU Act, the respondent No.2 recognised Union had no right to represent the cause of the workmen. He would moreover submit that majority of the employees had passed the Resolution on 27.08.2009 dissolving the recognised Union and further they had joined the petitioner Sanghatana in which case it is only the petitioner Sanghatana which will have a right to represent the cause of the workmen.

15. He would submit that the recognised Union had failed to pursue the charter of demands as a result of which the interest of the employees was adversely affected. In his submission, if the recognised Union fails to discharge its obligation towards its members and pursue the cause on their behalf, then there is no reason why the petitioner which now represents the majority of the employees cannot make a reference before the Industrial Tribunal, more so when it is a registered trade union.

16. According to learned counsel, the recognition under the MRTU Act is valid and can continue only during the subsistence of continued registration under the Trade Unions Act. The moment the registration under the Trade Unions Act is cancelled, recognition under the MRTU Act by itself is of no consequence. The recognition under the MRTU Act would then stand automatically cancelled. According to him, reading of the relevant provisions would indicate that the provisions as to registration and recognition are not independent of each other but the recognition under MRTU Act is dependent on a valid registration which has to be in operation and subsisting.

17. In his submission, the reference cannot be rejected on a technical consideration. Learned counsel would rely on the decision of the Division Bench of this Court in the case of **R.P. Sawant vs. Bajaj Auto Ltd. reported in 2002 (4), Bom.C.R. 376** to contend that even an individual employee has a right of appearing or acting in any proceeding relating to unfair labour practices even under Items 2 and 6 of Schedule IV of the MRTU Act. Relying on Para 59 of the decision, learned counsel would submit that this Court has held that even if there exists a recognised Union which has not appeared for the employee who invokes Items 2 and 6 of Schedule IV of the MRTU Act in his complaint to the Industrial Court, then the employee is entitled to continue such proceedings before the Industrial Court subject to one exception, namely, if the trade union appears in Court for the employee, then this right of the employee gets displaced by the recognised Union's superior right.

18. Learned counsel would submit that it is inconceivable that mere existence of an ineffective, unwilling or recalcitrant Recognised Union can take away the right of the employees to pursue their cause through the petitioner Sanghatana. Learned counsel would therefore submit that as

in the present case, when the recognised Union has failed to represent the cause of the workmen, then pursuant to the Resolution passed by the workmen dissolving the recognised Union, the petitioner is justified in maintaining the reference as majority of the workmen of respondent No.1 are now its members. Learned counsel for the petitioner would also rely upon the decision of the Division Bench of this Court in the case of **Warden & Co. (India) Ltd. & another vs. Akhil Maharashtra Kamgar Union & others** reported in **2001 (3) Bom.C.R. 375** to contend that even unrecognised Union is entitled to appear and act on behalf of the workmen of the Industry governed by the Industrial Disputes Act, 1947.

19. Per contra, learned Senior Counsel appearing on behalf of the respondent No.1 submits that the first proviso to Section 36 of the I. D. Act would clearly indicate that it is only the recognised Union which can represent the workmen in reference proceedings under the I. D. Act. He would further invite my attention to the provisions of the MRTU Act to submit that it is the respondent No.2 Union which can only be called as a 'recognised Union' under the MRTU Act functioning in the respondent No.1 Company. In his submission unless the recognition of the respondent No.2 is cancelled by following

the procedure laid down under Section 13 of the MRTU Act or unless the petitioner Union is granted the recognition under Section 14 of the MRTU Act the petitioner Union can not represent the workmen.

20. Learned Senior Counsel would further submit that though an application for recognition was made by the petitioner Sanghatana under Section 14 of the MRTU Act, the same came to be rejected by an order dated 07.11.2017 during the pendency of this petition. In any case he would submit that mere filing of an application under Section 14 for recognition would not confer upon the petitioner status of a recognised Union. In his submission mere cancellation of registration of the recognised Union under the Trade Unions Act, is no impediment for the recognised Union to function under the MRTU Act which provides an altogether different procedure for grant of and/or cancellation of recognition.

21. Learned Senior Counsel would further submit that the factory has closed its operation w.e.f. 25.01.2019. He would submit that almost all the members have accepted the terminal benefits. It is further pointed out by the learned

Senior Counsel that over and above the terminal benefits which were granted to the employees, the respondent No.1- Company has entered into individual settlement with majority of the employees.

22. Learned Counsel Shri Bapat appearing on behalf of the respondent No.2-Union has supported the order passed by the Industrial Tribunal and made submissions on similar lines as advanced by learned Senior Counsel for respondent No.1 management. In his submission the recognition of the respondent No.2 is not cancelled as per the procedure laid down in MRTU Act. On the contrary he would submit that the application filed by the petitioner for recognition under the MRTU Act is rejected. He would therefore submit that mere cancellation of the registration under the Trade Unions Act would not affect the right of the respondent No.2 to function as recognised Union. According to him, the concept of 'recognition' under the MRTU Act is different and distinct to that of 'registration' of a union under the Trade Unions Act. He would moreover invite my attention to the provisions of Section 36 of the Industrial Disputes Act. He would submit that reading of the provisions of the MRTU Act and Industrial

Disputes Act would clearly reveal that it is only recognised Union which can represent the workmen before the Industrial Tribunal.

23. Learned counsel Shri Topkar representing a different Union filed Civil Application (Stamp) No.29696 of 2018 for intervention opposing the petition. He submits that majority of the workmen are now members of his Union. According to him, the present petition therefore does not deserve to be entertained at the instance of petitioner.

24. Heard Learned counsel for the parties. I have gone through the Petition and the annexures and perused the order passed by the Industrial Tribunal. It is not disputed that the recognition of respondent No.2 is not cancelled as per the provisions of the MRTU Act. It is further not in dispute that in respect of demands of the workmen, the respondent No.2-Union had submitted charter of demands. As there was no progress, it is the petitioner's case that majority of the employees dissolved the respondent No.2 recognised Union and joined the petitioner Sanghatana. The petitioner Sanghatana then followed up with the charter of demands. It

is at petitioner's instance that reference was initiated before the Industrial Tribunal. The registration of the respondent No.2-Union under the Trade Unions Act was cancelled on 09.01.2009. However the recognition of respondent No.2 was never cancelled.

25. The question for consideration is whether in these circumstances the petitioner Sanghatana can represent the cause of its members by initiating the reference under the Act of 1947 when the recognition of respondent No.2 is not cancelled though its registration is cancelled under the Trade Unions Act. To appreciate the controversy, it would be necessary to refer to some of the relevant provisions of Industrial Disputes Act, 1947 and the MRTU Act. The first proviso to Section 36 of the Industrial Disputes Act specifically carves out the exception where the workman need not be represented by a recognised union.

26. Section 36 of the Industrial Disputes Act reads thus :-

“36. Representation of parties. - (1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by -

(a) any member of the executive or other office bearer of a registered trade union of which he is a member;

(b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other workman employed in the industry in which the worker is employed and authorized in such manner as may be prescribed.

Provided that, where there is a recognised union for any undertaking under any law for the time being in force, no workman in such undertaking shall be entitled to be represented as aforesaid in any such proceeding (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration) except by such recognised union.
(emphasis supplied by me)

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by -

(a) an officer of an association of employers of which he is a member;

(b) an officer of a federation of associations of employers to which the association referred to in Clause (a) is affiliated;

(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any

conciliation proceeding under this Act or in any proceedings before a Court.

(4) In any proceeding before a Labour Court, Tribunal or National Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceedings and with the leave of the Labour Court, Tribunal, or National Tribunal as the case may be."

27. Section 2(qq) defines Trade Union means a trade union registered under the Trade Unions Act, 1926. Section 2(ra) defines unfair labour practices means any of the practices specified in the fifth schedule.

28. The proviso to Section 36 has been added vide the Industrial Disputes (Amendment) Act, 1976 republished in Maharashtra Government Gazette Part VI, dated 6.5.1976. The proviso mentions that where there is recognised Union for any undertaking under any law for the time being in force, no workman in such undertaking shall be entitled to be represented as aforesaid in any such proceeding (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration) except by such recognised Union.

29. In this context, it would be material to consider the relevant provisions of the MRTU Act. Chapter 4 deals with the obligation and rights of the recognised Union, other Unions and certain employees. Section 19 deals with the obligation of recognised Union. Section 20 deals with the rights of recognised Union. It would be material to reproduce Section 20 (2) which reads thus :-

"20. Rights of recognised union :-

(2) Where there is a recognised union for any undertaking,-

(a) that union alone shall have the right to appoint its nominees to represent workmen on the Works Committee constituted under section 3 of the Central Act;

(b) no employee shall be allowed to appear or act or be allowed to be represented in any proceedings under the Central Act (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration), except through the recognised union; and the decision arrived at, or order made, in such proceeding shall be binding on all the employees in such undertaking; and accordingly, the provisions of the Central Act, that is to say, the Industrial Disputes Act, 1947, XIV of 1947, shall stand amended in the manner and to the extent specified in Schedule I."

Thus sub-section 2(b) of Section 20 MRTU Act contemplates that no employee shall be allowed to appear or

act or be allowed to be represented in any proceedings under the Central Act (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration), except through the recognised Union.

30. It would also be pertinent to make reference to Section 21 of the MRTU Act which reads thus :-

“21. Right to appear or act in proceedings relating to certain unfair labour practices :-

(1) No employee in an undertaking to which the provisions of the Central Act for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceedings relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the recognised union;

Provided that, where there is no recognised union to appear, the employee may himself appear or act in any proceeding relating to any such unfair labour practices.

(2) Notwithstanding anything contained in the Bombay Act, no employee in any industry to which the provisions of the Bombay Act, for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceeding relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the representative of employees entitled to appear under Section 30 of the Bombay Act.”

Reading of Section 21 would indicate that no employee in an undertaking to which the provisions of the Central Act (Industrial Disputes Act) for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceedings relating to unfair labour practices specified in items 2 and 6 of Schedule IV of the MRTU Act except through the recognised Union. The proviso then says that, where there is no recognised Union to appear, the employee may himself appear or act in proceeding relating to any such unfair labour practices.

31. It may also material to refer to Section 22 of the MRTU Act which is a provision relating to rights of unrecognised Unions. Section 22 reads thus :-

“22. Rights of unrecognised unions :-

Such officers, members of the office staff and members of any union (other than a recognised union) as may be authorised by or under the rules made in this behalf by the State Government shall, in such manner and subject to such conditions as may be prescribed, have a right -

(I) to meet and discuss with an employer or any person appointed by him in that behalf, the grievances of any individual member relating to his discharge, removal, retrenchment, termination of service and suspension;
(ii) to appear on behalf of any of its members employed in the undertaking in any domestic or departmental inquiry held by the employer.

32. Thus reading of the provisions of the MRTU Act indicates the matters in respect of which the recognised Union is entitled to represent the workmen. Useful reference may also be had to the definition of “recognised Union” found in Section 3 (13) of the MRTU Act. It says that “recognised Union” means a union which has been issued a certificate of recognition under Chapter III”. Section 3 (17) defines “union” means a trade union of employees, which is registered under the Trade Unions Act, 1926”.

33. It is in the light of the definition of 'Union' in Section 3 (17) of the MRTU Act learned counsel for the petitioner urged that as the registration of respondent No.2 Union is cancelled then it can no longer be a recognised Union within the meaning of Section 3 (13) of the MRTU Act.

34. The argument of learned counsel for the petitioner sounds attractive at the first blush. However, in the facts of the present case, the matter has to be considered from the stand point that the petitioner though a registered trade union is admittedly not a recognised Union within the meaning of the MRTU Act. In my opinion, unless the

petitioner Union qualifies as recognised Union under the MRTU Act, it will not be entitled to represent the workmen in view of the clear mandate of the proviso to Section 36 of Industrial Disputes Act.

35. At this juncture it would also be material to consider the provisions of Section 13 and 14 of the MRTU Act. Section 13 provides for cancellation of recognition and suspension of rights of recognised Union, whereas Section 14 deals with recognition of other Union. Section 13 and 14 read thus :-

“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 :

Provided that, where a strike (not being an illegal strike under the Central Act) has extended to a period exceeding fourteen days in any calendar month, such month shall be excluded in computing the said period of six months :

Provided further that, the recognition of a union shall not be cancelled under the provisions of this sub-clause, unless its membership for the calendar month

in which show cause notice under this section was issued was less than such minimum; or
(iii) that the recognised union has, after its recognition, failed to observe any of the conditions specified in section 19; or

(iv) that the recognised union is not being conducted bona fide in the interest of employees, but in the interests of employer to the prejudice of the interest of employees; or

(v) that it has instigated, aided or assisted the commencement or continuation of a strike which is deemed to be illegal under this Act; or

(vi) that its registration under the Trade Unions Act, 1926, XVI of 1926 is cancelled; or

(vii) that another union has been recognised in place of a union recognised under this Chapter.

(2) The Industrial Court may 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, that it has committed any practice which is, or has been declared as, an unfair labour practice under this Act :

Provided that, if having regard to the circumstances in which such practice has been committed, the Industrial Court is of opinion, that instead of cancellation of the recognition of the union, it may suspend all or any of its rights under sub-section (1) of section 20 or under section 23, the Industrial Court may pass an order accordingly, and specify the period for which such suspension may remain in force.

(emphasis supplied by me)

14. Recognition of other union.-

(1) If any union makes an application to the Industrial Court for being registered as a recognised union in place of a recognised union already registered as such (hereinafter in this section referred to as the "recognised union") for an undertaking, on the ground that it has the largest membership of employees employed in such undertaking, the Industrial Court shall, if a period of two years has elapsed since the

date of registration of the recognised union, call upon the recognised union by a notice in writing to show cause, within thirty days of the receipt of such notice, as to why the union now applying should not be recognised in its place.

An application made under this sub-section shall be accompanied by such fee not exceeding rupees five as may be prescribed :

Provided that, the Industrial Court may not entertain any application for registration of a union, unless a period of one year has elapsed since the date of disposal of the previous application of that union.

(2) If, on the expiry of the period of notice under sub-section (1), the Industrial Court finds, on preliminary scrutiny, that the application made is in order, it shall cause notice to be displayed on the notice board of the undertaking, declaring its intention to consider the said application on the date specified in the notice, and calling upon other union or unions, if any, having membership of employees in that undertaking, employer and employees affected by the proposal to show cause within a prescribed time as to why recognition should not be granted.

(3) If, after considering the objections, if any, that may be received under sub-section (2) and if, after holding such enquiry as it deems fit (which may include recording of evidence of witnesses and hearing of parties), the Industrial Court comes to the conclusion that the union applying complies with the conditions necessary for recognition specified in section 11 and that its membership was, during the whole of the period of six calendar months immediately preceding the calendar months, in which it made the application under this section, larger than the membership of the recognised union, then the Industrial Court shall, subject to the provisions of section 12 and this section, recognise the union applying in place of the recognised union, and issue a certificate of recognition in such form as may be prescribed.

(4) If the Industrial Court comes to the conclusion that any of the other unions has the largest membership of employees in the undertaking, and such other union has notified to the Industrial Court its claim to be

registered as a recognised union for such undertaking, and if, such other union satisfies the conditions requisite for recognition under section 11 and complies with the conditions specified in section 19 of this Act, the Industrial Court shall grant such recognition to such other union, and issue a certificate of such recognition in such form as may be prescribed.

Explanation : For the purpose of this sub-section, the other union shall be deemed to have applied for recognition in the same calendar month as the applicant-union.

(5) Every application under this section shall be disposed of by the Industrial Court as far as possible, within three months, from the date of receipt of the application, where a group of concerns in any industry which is notified to be one undertaking for which recognition is applied for is situated in the same local area; and in any other case, within four months.

Explanation : "local area" for the purposes of this sub-section means the area which the State Government may, by notification in the Official Gazette, specify in such notification."

36. Reading of Section 13 reveals that there is a detailed procedure prescribed for cancellation of recognition of the Union. The recognition was granted to respondent No.2-Union in terms of Sections 11 and 12 of the MRTU Act. Section 13 provides for procedure for cancellation of recognition and suspension of rights. Thus section 13 provides that the Industrial Court after holding an inquiry, if it is satisfied that its registration under the Trade Unions Act is cancelled that it should cancel the recognition of a union. The argument of

learned counsel that cancellation of recognition under the Trade Unions act ipso facto results in cancellation of recognition cannot be accepted in the teeth of Section 13.

37. It is not in dispute that the petitioner-Union had applied for recognition under the MRTU Act and an application was so made in terms of Section 14 of the said Act. The said application ultimately came to be dismissed. In the submission of the learned counsel for the petitioner, the application is not dismissed on merits but on technical grounds.

38. The petitioner-Union applied for recognition under the MRTU Act and factually is not a recognised Union under the provisions of the MRTU Act. The question, therefore, is whether the petitioner-Union can still represent the employees in view of the provisions of the MRTU Act and the Industrial Disputes Act.

39. I do not find any provision in the MRTU Act which provides for cancellation of recognition of a Union upon cancellation of registration under the Trade Unions Act. On the contrary not only does MRTU Act provide for an elaborate

procedure if any other Union seeks cancellation of recognition of a recognised Union but even for the Industrial court to cancel recognition on the ground that registration is cancelled, it still has to record satisfaction after holding an inquiry as per section 13 of the MRTU Act. No doubt Section 3(13) defines “recognised Union” means a union which has been issued a certificate of recognition under Chapter III. Further Section 3 (17) defines “union” to mean a trade union of employees, which is registered under the Trade Unions Act, 1926. The respondent No.2-Union was a registered trade union under the Trade Unions Act when it initially applied for recognition. Respondent No.2 was therefore granted recognition under the MRTU Act. Later on registration of respondent No.2 is cancelled. Thus the registration of respondent No.2 under the Trade Unions Act, 1926 is cancelled after it received recognition under the MRTU Act. Would it amount to an automatic cancellation of recognition as learned counsel for petitioner on a reading of Section 3 (13) of the MRTU Act and 3 (17) of the Trade Unions Act would submit. The answer would have posed no difficulty in the absence of first proviso to Section 36 of the Industrial Disputes Act and Clause (vi) of Section 13(1) of the MRTU Act.

40. Once the respondent No.2 has received the recognition, then as per the provisions of MRTU Act the procedure is laid down for cancellation of recognition. That the registration of the Trade Union is cancelled is a ground for seeking cancellation of recognition. It is therefore not possible to accept the argument that cancellation of registration under the Trade Unions Act has an automatic effect of cancellation of recognition. In my opinion, the provision of the MRTU Act are clear and unambiguous.

41. Section 3 (17) of the Trade Unions Act and Section 3 (13) of the MRTU Act cannot be read de hors the first proviso to Section 36 of the Industrial Disputes Act and the provisions of MRTU Act laying down detailed procedure for granting of or cancellation of a Recognition after an adjudication under the MRTU Act.

42. The first proviso to Section 36 of the Industrial Disputes Act is very clear and unambiguous. It mentions about a recognised unions entitlement to represent a workman. Where there is a recognised union for any undertaking under any law for the time being force it is only that recognised union which can represent the workman.

43. The respondent No.2 union's recognition is not cancelled under the MRTU Act. Though its registration as a trade union is cancelled, it nonetheless continues to be a recognised union under the MRTU Act, which is the law for the time being force in terms of the proviso to Section 36. Cancellation of registration under the Trade Unions Act may be a good ground to apply for cancellation of recognition. But, so long as the recognition is not cancelled upon an inquiry in terms of the procedure laid down under the MRTU Act, which is the law for the time being in force, the respondent No.2 would continue to be a recognised union. The petitioner-union had approached the Industrial Court for granting it recognition under the MRTU Act and also for cancellation of recognition of respondent No.2 - Union.

44. In the absence of a recognised union, the petitioner being a registered trade union can very well represent the workmen as provided by Section 36(1)(a). There is much force in the submission of learned Counsel for the petitioner that if workmen have lost faith in the recognised union and as the recognised union is not acting in the best interest of the workmen, the workmen should not be

deprived of representation by a registered trade union which under Section 36(1)(a) of I.D. Act is entitled to represent. In the absence of the first proviso to Section 36 of the I.D. Act and Clauses (iv) and (vi) of Sub Section 1 of Section 13 of the MRTU Act there would be difficulty in accepting this submission. However to allow the petitioner the right to represent the workmen when there is already a recognised Union would render the first proviso to Section 36 of the I.D. Act nugatory. It is the cardinal principle of law that if law provides for something to be done in a particular manner, then it has to be done in that manner alone and no other.

45. In my opinion, having regard to the elaborate procedure prescribed by the MRTU Act specifically dealing with the recognition of the Union, it is imperative for the petitioner to first get a recognition under the MRTU Act. Section 20 of the MRTU Act deals with the situation where there is a recognised Union for any undertaking, then no employee is allowed to be represented in any proceedings under the Central Act except through the recognised Union. In fact sub-section 2(b) of Section 20 of the MRTU Act provides that in respect of legality or propriety of an order of

dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee, the employee can always file proceedings in his individual capacity. In all other matters, when there is a recognised Union for an undertaking, it is only the recognised Union which can represent the employees in proceedings under the I.D. Act. Having regard to the clear and unambiguous provisions of the MRTU Act, till such time the recognition of the respondent No.2-Union is cancelled under Section 13 or petitioner-Union obtains recognition under Section 14 of the MRTU Act, the reference under the I.D. Act at the instance of the petitioner is not maintainable. Though Section 3(17) provides that "Union" means a trade union of employees, which is registered under the Trade Unions Act, 1926, so long as the recognition of the respondent No.2 is not cancelled, it would continue to be recognised Union within the meaning of the MRTU Act. Reading of the first proviso to Section 36 of I.D. Act together with the provisions of MRTU Act leaves no manner of doubt that where there is a recognised Union for any undertaking under any law for the time being in force, no workman in such undertaking shall be entitled to be represented except by such recognised Union.

46. In this light of the matter, I am inclined to hold that as the recognition of the respondent No.2 Union has not been cancelled and even as the application made by the petitioner Union for recognition under the MRTU Act is rejected, the law would recognise respondent No.2 as a recognised Union for the time being in force for the respondent No.1 undertaking. Contention of learned counsel for the petitioner that the rejection of the petitioners application for recognition is not on merits but on technical ground of reduction of number of employees can only be stated to be rejected as factually the petitioner is not granted recognition under the MRTU Act.

47. Learned counsel for the petitioner has extensively relied upon the decision of **Warden & Company** (*supra*), I find that the question for consideration before the Division Bench was whether the unrecognised Union is entitled to appear and act on behalf of the workmen of an industry governed by the Act of 1947 in a complaint relating to unfair labour practice specified under Items 2 and 6 of Schedule IV of the MRTU Act. What has been held is that it is not the exclusive right of the recognised union to institute and prosecute a complaint under MRTU Act in respect of an

Industry governed by the Industrial Disputes Act in relation to unfair labour practice other than specified in item 2 and 6 of Schedule IV of MRTU Act. The decision in Warden's case is in the context of of a complaint of unfair labour practice instituted under the MRTU Act by an unrecognised Union under any of the Item of Schedule IV. The present case is in respect of the maintainability of reference under the I.D. Act at the instance of unrecognised Union. In my opinion Warden's case is not applicable to the facts of the present case.

48. The decision relied upon by the petitioner in **R. P. Sawant** (*supra*) will also not have any application in the facts of the present case. This Court in **R. P. Sawant** (*supra*) was dealing with the rights of the individual employee who invokes Items 2 and 6 Schedule IV of the MRTU Act of the Industrial Court. The employee is entitled to continue such proceedings before the Industrial Court subject to one exception, namely, if the trade union appears in Court for the employee, then this right of the employee gets displaced by the recognised Union's superior right. The Division Bench held this in the light of the fact that it is inconceivable that mere existence of the ineffective, unwilling or recalcitrant

union can take away the right of the employees granted to them under the MRTU Act of filing the complaint.

49. In this view of the matter, as there is a recognised Union in existence in the respondent No.1 Company, the petitioner, though a registered Trade Union, but as it is an unrecognised Union under the MRTU Act, will not have a right to represent the employees in the reference under the I.D. Act. I do not find any error in the view taken by the Industrial Court.

50. Writ Petition No.5917 of 2012 is dismissed. Rule is discharged with no order as to costs.

51. In view of the dismissal of the Writ Petition, nothing survives for consideration in the Civil Application (Stamp) No.29696 of 2018. The Civil Application is disposed of.

(M. S. KARNIK, J.)