

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

WRIT PETITION NO.4543 OF 2019

Globatronix (Bombay) Pvt. Ltd.	...	Petitioner
Versus		
Rayatraj Kamgar Sanghatana	...	Respondent

.....

Mr. Arshad Shaikh a/w Mr. Niraj Prajapati for the Petitioner.
Mr. Nitin Desai a/w Mr. Mihir Joshi for the Respondent.

.....

CORAM : S.C. GUPTE, J.

DATE : 14 JANUARY 2020

P. C. :

. Heard learned Counsel for the parties.

2 This writ petition challenges an order passed by the Industrial Court at Mumbai on an application raising preliminary objections to the maintainability of an application made for recognition of the Respondent-union under Section 11 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (“Act”).

3 There were three objections to the Respondent’s application on behalf of the Petitioner herein, who was the non-applicant before the Industrial Court. The first objection related to conflict of interest of the office bearers of the Respondent-union; the second concerned non-

joinder of the Petitioner as a company to the application for recognition; and the third concerned non-inclusion of the particular industry in the list of industries appended as schedule to the constitution of the Respondent-union. Mr. Shaikh, learned Counsel appearing for the Petitioner does not press the first objection concerning conflict of interest. Learned Counsel submits that it was the Managing Director of the Petitioner-company, who was arraigned as non-applicant and that does not comply with the requirement of Section 11 read with rules framed in that behalf. It is submitted that joinder of the Managing Director was wrongly countenanced by the Industrial Court on the footing of 'Department Head', where Government is an employer. What the Industrial Court observed is that considering the fact that Order 39 of the Code of Civil Procedure envisages suits by and against corporation, such as, the petitioner herein, to be signed and verified by a director or principal officer of the corporation as also service of summons on the corporation through any of these officers, the managing director being arraigned as a party, not in his personal capacity, but as the principal officer of the corporation, satisfied the mandate of joinder of the employer as a party to the application for recognition. No infirmity can be found with either of the approach of the Industrial Court or the conclusion arrived at by it. The executive authority of the corporation undoubtedly vests in its managing director and when he is arraigned in his official capacity and not as an individual, such joinder may very well be termed as a proper joinder of the corporation.

4 It is secondly submitted by learned Counsel for the Petitioner that electronic industry, which the Petitioner undoubtedly is in the present case, is not an ‘industry’ listed in the list appended as Annexure ‘A’ to the constitution of the Respondent union. In its object clauses (clause-2(1)(A) of its constitution), electronic industry is mentioned as one of the main industries, organizing whose workmen is the object of the union. No doubt, in addition to the industries named in these objects, the constitution does refer to Annexure ‘A’ and industries listed therein. The relevant object clauses read with Annexure ‘A’ do not *prima facie* imply that it is only those industries, which are mentioned in Annexure ‘A’, which are covered in the constitution of the Respondent-union; the list is mentioned in Annexure ‘A’ to the constitution *prima facie* as a list of industries in addition to those mentioned in the object clauses. Even if some of those industries, which are listed in Annexure ‘A’, could be said to be forming part of, or capable of being subsumed within, the description of industries to be found separately mentioned in the object clauses, *prima facie* that does not imply that the list given in Annexure ‘A’ is exhaustive so far as the objects of the Respondent union are concerned.

5 Mr. Shaikh relies on the decision of a Division Bench of our court in the case of **Indian Express Newspapers (BOM) Employees Union Vs. K.M. Desai**¹ in support of his contention that only industries mentioned in the schedule should be treated as permissible industries

1 1995 I CLR 677

in which the union can operate. In **Indian Express Newspapers (BOM) Employees Union**'s case, the relevant object clause provided for organization and uniting of "persons employed in the industries mentioned in Schedule (A)". Schedule (A) thus was incorporated in the object clause by reference and it was industries listed in Schedule (A) alone, which would be covered and nothing else. In the backdrop of these facts, the Division Bench of our court observed that the particular industry, in that case, newspaper industry, was not part of the objectives of the union. The argument before the court was that the entry "printing press" included within it newspaper industry such as the respondent before the court in that case. The Division Bench held that publishing of newspapers involved several functions, apart from the function of printing; merely because printing press was one of the components of newspaper industry, it could not be said that the entire newspaper industry was nothing but a printing press. In other words, what the Division Bench held was that "newspaper industry" could not be equated with "printing press industry", as publication of newspapers and periodicals involved many more functions than those involved in printing. The facts of **Indian Express Newspaper (BOM) Employees Union** (supra) are thus clearly distinguishable and the decision cannot be used against the Respondent union here.

6 Neither the approach nor the conclusion of the Industrial Court on the two issues referred to above, thus, exhibits any unreasonableness or perversity. The court's view on both issues are

clearly possible views and cannot be termed as impossible or perverse. At any rate, the Industrial Court has kept the particular issue concerning coverage of electronic industry such as the Petitioner's in the object clauses of the Respondent union, open for being considered at the final hearing. The order, thus, does not call for any interference either under Article 226 or Article 227 of the Constitution of India. The writ petition is, in the premises, dismissed.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

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