

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 708 OF 2022

Amol Gaikwad and ors .. Petitioners
Versus
The State of Maharashtra (thru
Industries Energy Labour Dept & ors .. Respondents

...

Mr. Prashant Kshirsagar i/b Sarvadnya Legal Associate for the
petitioners.
Mr.P.V. Nelson Rajan, APP for the State.
Mr.Nitin Kulkarni for the respondent.

CORAM: RAVINDRA V. GHUGE, J.
DATED : 31st JANUARY, 2022

P.C:-

1 Rule. Rule made returnable forthwith and heard
finally by the consent of the parties.

2 The petitioners are permanent employees of the
Company “Bilt Graphics Paper Products Ltd” at Bhigwan. It is
undisputed that respondent no.3 by name “Ballarpur Industries
Employees Union Unit, Bhigwan, is the recognized Union in the
said establishment.

3 By this petition, the petitioners have put forth prayer clauses 17 (A) and (B) which read as under :-

(A) That this Hon'ble Court be pleased to issue a writ of certiorari or any other writ, order or direction calling for the record and proceeding of the Deputy Registrar of Trade Unions has in Application No. 03/2020 and after going through the legality, validity and propriety thereof be pleased to quash and set aside the impugned judgment dated 29/01/2021 which is at Exhibit "A" to the Petition :

(B) After going through the documents on record it may be directed to issue the consent certificate for adjudicating the matter before the Ld. Industrial Court.

4 The petitioners are before the Court on the basis of an application filed by them under Regulation 23 (1) of the Maharashtra Trade Union Regulations, 1927 which are framed under the Trade Unions Act, 1926. Regulation 23 of the said Regulations, reads as under :-

"23. Manner of referring dispute to Industrial Court under section 28-1A. (1) Any person desiring to obtain the consent of the Registrar under sub-section (1) of section 28-1A for the purpose of referring a dispute to the Industrial Court under that sub-section shall make an application to the Registrar in Form "K".

(2) On receipt of the application under sub-rule (1), the Registrar shall make such inquiries as he may deem fit; and if he is satisfied that any dispute of the nature referred to in sub-section (1) of section 28-1A exists he may give his consent in Form "L", called the consent certificate.

(3) On receipt of the consent certificate under sub-rule (2), the applicant shall then refer the dispute to the Industrial Court in Form "M" and enclose therewith the consent certificate in original.

5 Form “K” is prescribed under Regulation 23(1) for preferring the application for seeking a consent certificate, under section 28(1-A), which prescribes the power of the Industrial Court to decide certain disputes. The said Section reads as under :-

“28(1-A) Power of Industrial Court to decide certain disputes – (1)Where there is a dispute as respects whether or not any person is an office-bearer or member of a registered trade union (including any dispute relating to wrongful expulsion of any such office-bearer or member) or where there is any dispute relating to the property (including the account books) of any registered trade union any member of such registered trade union for a period of not less than six months may, with the consent of the Registrar, and in such manner as may be prescribed, refer the dispute to the Industrial Court constituted under the Bombay Industrial Relations Act, 1956 for decision”.

6 For the sake of brevity, Form “K” is reproduced as under :-

FORM ‘K’

[See Regulation 23(1)]

TRADE UNIONS ACT, 1926

Application to the Registrar

Name of the Trade Union -
Registration Number

(Address)

Dated this day of ...20

To,

The Registrar of Trade Unions,
State of Maharashtra, Mumbai.

Sir,

I/We have to inform you that a dispute of the nature described in Annexure has* arisen as respects whether or not Shri/ Sarvashri is a member/office bearer/are member/office bearers* relating to the property of the..... Union mentioned below.

I/We have, therefore, to request you to kindly make such inquiries as you deem fit under Regulation 23 of the Maharashtra Trade Unions Regulations, 1927, and if satisfied, to communicate your consent in writing to the undersigned so as to enable him/them to refer the dispute to the Industrial Court, Mumbai.

I/We hereby affirm that I am/we are a member/members of the said Union for a period of not less than six months.

Yours faithfully.

*To be struck off if not applicable

7 Form "K" is a format in which the Union has to make an application for seeking consent of the competent authority which is the Registrar or the Assistant Registrar, as the case may be, who has to be satisfied that there is a dispute between the applicants and the Union, and such a dispute will have to be referred to the Industrial Court for adjudication. While assessing whether there is any dispute, only to form an opinion that the

dispute exists, the Registrar has to make enquiries under Regulation 23(2), as he may deem fit. The Registrar is not mandated to resort to a fact finding adjudication exercise. He only has to conduct such enquiries by which he could be satisfied that a dispute exists under sub-section 1 of Section 28(1-A). This would clearly indicate that the Registrar has to perform an administrative function of making an assessment as to whether there exists a dispute.

8 In the present case, the petitioners have tendered a detailed application running into six pages, in the nature of Form 'K'. It requires no debate that the application need not be as brief as is form "K". The matter that is set out is important and not the form.

9 It is an admitted position that these petitioners have filed their application (undated) on 14/05/2018 which is the date on which the Registrar Trade Unions received it from the petitioners. By a communication dated 21/09/2019, the Dy. Registrar conveyed to the petitioners that an order has been passed granting a consent certificate for referring the dispute to the Industrial Court. The Union preferred Writ Petition No.985 of 2020, challenging the consent certificate. It was held that the Dy. Registrar proceeded on the footing that these petitioners were denied membership of the Union and therefore, the consent

certificate could not have been granted. However, since several documents were not taken into account by the Dy. Registrar, this Court vide order dated 11/3/2020 set aside the order of the Dy. Registrar and remitted the matter to his office for a re-consideration afresh.

10 By the impugned order dated 29/1/2021, the present Deputy Registrar has refused to issue the consent certificate. He has held in paragraph no.8 and 9 as under :-

“8) It is also important to note that from the record it reveals that the applicants themselves made an application before this Authority on 06/12/2018 inter alia contending that, the Union may be directed to admit them as members of the union. It is pertinent to note that the said application was opposed by the union inter alia contending that under which provisions of law the Registrar has a power to direct them to admit as a member of the Union. At the cost of repetition I say that my predecessor earlier granted the said application by an order dated 31/07/2019 and granted a Consent Certificate to the applicants inter alia observing that they are deemed to be the members of the union. The said certificate was challenged by the opponents before the Hon'ble High Court and the said certificate was set aside by Hon'ble High Court. Thus, from the record it is crystal clear that the applicant themselves accept before the authority that they are not the members of the Union and they may be admitted as members. Thus, once having admitted the position they are not the members of the Union later on they cannot conveniently contend that they are the members of the union. Thus, the applicants have mercilessly failed to prove that they are members of the union as contemplated under Regulation 23 of the Maharashtra trade Unions Regulations, 1927.

9) The applicant has contended before me that the subscription was collected from the members no receipts were issued to the members. But in order to satisfy me I called for the membership receipt book at random from the opponent Union and the opponent Union has shown me the said receipt book. Thus, the stand of the applicant on that account cannot be accepted. I have also gone through the annual returns filed by the opponent Union before the Authority under regulation 17 (1) the Rules in Form-I and I found that in clause number 12 and 13 they have shown the memberships of the employees and accordingly, the audit of the union is duly audited and certified by the Chartered Accountant and none of the members had made any grievance about the audit. In fact, after 2018 the Annual General Meeting was held by the opponent Union and union accepted the said accounts by passing the resolution and therefore, it cannot be said that the applicants are the members of the union. Thus, in view of the judgment of Supreme Court of Borosil Glass work, if the applicants have grievance that the Union has not admitted them as a member then the remedy lies to the Civil Court and the only members of the union can raise a dispute under Section 28 (1-A) of the Trade Unions Act, 1926.

The applicants have submitted written submission in support of their claim on 18.12.2020. In the said application the applicants have once again demanded the record from the Opponent Union. The opponent Union had produced the record before me. However, the union has specifically stated that the said record being it's internal matter should not be shared with the non members. I have gone through the record of membership, receipt book and I am satisfied that the applicants names do not appear in the records during the relevant period. Therefore, applicants having not proved their membership, cannot demand the record of the Opponent Union.

In the said submission, the applicants have referred to section 52 of the MRTU and PULP Act along with regulation 146 of Industrial Court Regulations, which stipulate an obligation on recognized union to file periodical returns, it has no relevance in the context of this matter.

Similarly the rule 16 cited by the applicants also has no relevance.

I have also gone through the judgments submitted by the applicants. The judgment of Mahindra and Mahindra Workers Union is the point meaning of consent and the other judgment of Kisan Rathi vs Dinkar Patil, it is under Indian Evidence Act. It is totally irrelevant in context with this matter.

The applicants have failed to prove that they are the members of from January 2017 to December 2017. Thus they failed to prove that they were members of the union for six months prior to filing the application 14.05.2018 and form K for seeking consent as required under Section 28 (1-A) of the Trade Unions Act' 1926. Hence the following order is passed.

ORDER

The application filed by the applicant dated 14.05.2018 and subsequently 16.03.2020 is hereby rejected.

11 The petitioners, in the very first paragraph of their application, have stated that “यातील तक्रारदारातर्फे विनंती अर्ज करतो की, वरिल सर्व तक्रारदार हे बिल्ट भिगवन कंपनीमध्ये कायमस्वरूपी बलापूर इंस्टीट्यूट एम्प्लॉईज युनियन चे सभासद आहेत”.

12 It is thus apparent that the petitioners have claimed to be the members of the Union. The learned Advocate for the Union admits, on instructions, that petitioner no.2 was an office bearer of the Union in 2011. Petitioner no.2 contends that he was the Vice President of that said Union for the period 2005 to 2011. In my view, the Registrar cannot adjudicate upon the merits of the dispute as to whether petitioner no.2 was the Vice President

of the Union till 2011, or that he has been illegally unseated thereafter. This aspect has to be left to the Industrial Court which could consider the oral and documentary evidence, as may be recorded before it, and then decide the issue.

13 On the second page of the Application at clause 3, the petitioners have specifically contended as under :-

“३) प्रत्येक महिन्यात संघटनेच्या सभासदांची सभासद फी म्हणून कामगारांकडून घेतली जाते. परंतू कोणत्याही कामगारांना अथवा सभासदाला पावती दिली जात नाही. म्हणून त्या विषयी पावती पुस्तकच उपलब्ध नाही असे दिसून येते”.

14 The question that arises is, as to whether the contention of the petitioners that they had been contributing to the Membership of the Union and yet are not issued with receipts, should be decided by the Dy. Registrar or whether this dispute should be adjudicated upon by the Industrial Court.

15 In paragraph no.4 of their application, the petitioners have contended as under :-

४) वेतन करार पुर्ण करण्यासाठी लेबर ऑफीसला करार केला जातो. परंतू करारपुर्ण झाले नंतर संघटनेच्या प्रतिनिधींनी सभासदांकडून वैयक्तिक संमती फार्म भरून घेतला जातो जो सभासद संमती फार्म भरत नाही, त्यांला वेतन करार लागू होणार नाही. असे सांगून वेठीस धरले जाते. स्वतःच्या अधिकारात मनमानी अशा देनगीच्या स्वरूपात वसुली केली जाते. ती रक्कम वर्षाकाठी ७,००,००० /- (सात लाख फक्त) घरात येते त्याचे ऑडीट कामगार आयुक्त कार्यलय येथे देणे गरजेचे असताना ते दिले जात नाही व कोणत्याही कामगाराला सांगितले जात नाही त्या पैशाचा दुरुपयोग करून ती सर्व रक्कम अध्यक्ष व सचिव यांना मानधनाच्या स्वरूपात देण्यात येते”.

16 In paragraph no.10 of their application, the petitioners have contended as under :-

“१०) कंपनीचा कराराचा घोषवारा मध्ये २००२ पासून कामगारांच्या पगारातून १० रु. कपात, जुलै २००८ मध्ये ५००रु कपात, जुलै २०११ मध्ये १५००/- कपात, ऑगस्ट २०१४ वेतन करारातून ५०००/- रु. कपात करण्यात आली. घोषवारामधून लिखित आहे परतू ऐवढी मोठी रक्कम कोणत्याकामासाठी खर्च केली. याचा कोठेही उल्लेख नाही. ती सर्व रक्कम अध्यक्ष व सचिव यांनी मानधन म्हणून घेतल्याचे समजते”.

17 The learned counsel for the petitioners submits that as the Union did not issue any receipts, they are handicapped from demonstrating that they continued to be the members of the Union till 2018. It is pointed out on the basis of the arrears calculation slip (October 2013 to August 2014) with reference to one petitioner at page 59 of the Petition Paper Book that the Union fund of Rs.5,000/- was apparently deducted from the salary. It is then pointed through the salary slips with regard to N.M.S. Agreement Arrears slip for October 2017 to March 2019, that these petitioners contributed Rs.1500/- as per LTS Clause 10(iv), to the Union. It is their further allegation that as the Union is being administered by self centered office bearers, whoever raises a dispute about the financial mismanagement of the Union, the President/Secretary take a stand that such aggrieved worker is not the member of the Union. The record reveals that till 2011, the contributions made by these petitioners towards the Union, is admitted.

18 The petitioners contend that the Union conveniently takes a stand that these petitioners are not its members, by denying their membership, only because they have raised a voice about the mismanagement of the Union. A civil dispute cannot be raised by the petitioners *inter-se*, the Union. The *modus operandi* adopted by the Union of not issuing membership receipts to any worker is by way of a defence mechanism to deny the membership of the disputing worker so that no consent certificate is issued and the matter does not reach the Industrial Court, which alone could embark upon a fact finding exercise by recording oral and documentary evidence.

19 The learned Advocate for the Union has strenuously contended that this Court should accept the submission of the Union that if the petitioners do not have receipts to indicate their membership, they are deemed to be non-members of the Union. He then submits that the contribution towards the Union upto March 2019 which is paid by the petitioners, is not by way of Union Membership contribution, but is by way of an acknowledgment of the efforts of the recognized Union in arriving at long term settlements under Section 2(p) of the Industrial Disputes Act, 1947. This cannot be construed as Union Membership fee. He therefore, submits that though these petitioners may be members of the Union till June 2011, all union contributions ranging from Rs.1500/- to Rs.5,000/- having been

paid by these petitioners, were not union membership contribution, but were by way of a Union donation for the efforts taken by the Union in signing various settlements u/s.2(p).

20 I find certain documents placed on record by the Union pertaining to the annual returns for the year December 2014. The contribution from the members of the Union till December 2014 is shown to be Rs.37,15,000/ (Rs.Thirty Seven Lakhs Fifteen thousand). It is not disputed that such large contributions have further increased in the following years.

21 Vide the impugned order, I find that the Dy. Registrar has only made passing references (in the reproduced portions herein above) that he has seen the records as well as the audited certified report by the Chartered Accountant to conclude that these petitioners are not members of the Union. There is no dispute that the present contribution toward Annual Union Membership per worker is Rs.5,000/-. In December 2014, the Union's total Annual Collection was Rs.37,15,000/-, which may include other Union contributions, donations etc. The undisputed aspect is that these petitioners were the members of the Union till 2011. Whether they were deprived of Membership receipts or whether their contributions are reflected in the Audit reports, or whether their contributions were towards Union Membership fees or by way of gratis to the Union, are aspects which need to be investigated into by a Competent Authority and

there is no dispute that such investigation, assessment and conclusion on these aspects could be drawn/arrived at, only by the Industrial Tribunal and not by the Dy. Registrar Trade Unions. Moreover, it appears that the Dy. Registrar has avoided making references to the various documents purportedly placed before him, in the impugned order, which creates a doubtful picture.

22 In Bocaro Steel Workers Union Vs. State of Bihar, 2000 Vol.I LLJ, 117(Patna High Court), it was observed in the light of several decisions of the Hon'ble Apex Court that the Registrar of the Trade Unions has no authority to adjudicate upon the dispute itself, leave alone whether there was a valid election or not. It was held that he does not have the authority to adjudicate as to which body was validly elected. This is to be left to the Industrial Court to conclude on the merits of the dispute raised. The Registrar also does not have the authority to direct election to be held or nominate his nominee to supervise the election. In short, it is an administrative function of the Registrar to refer a dispute to the Industrial Tribunal, if he forms a *prima facie* view that there is a dispute which deserves to be adjudicated upon, subject to the disputants fulfilling the requirements of law.

23 In Baddruddin Quereshi vs. B.V. Bhadruiyya & Ors, 2003 Vol.3 LLJ, 1050 (The Division Bench of the Chhatitsgarh High Court), decided whether the Registrar could deal with the

merits of the matter. It was held that it is the Industrial Court which has to decide the case on its merits.

24 What is laid down, in the light of the view taken by the learned Division Bench of this Court in *Mahindra and Mahindra Workers Vs. State of Maharashtra, (2005) III LLJ 283*, is that the consent certificate means nothing more than a reference and the dispute is finally to be decided by the Industrial Court. It was held that the disputant should aver that he is the Member of the Union which gives him a right to raise a dispute which can be referred to the Industrial Tribunal.

25 In *Rashtriya Girani Kamgar Sangh, Sholapur and ors. Vs. Vithal Ramchandra Shinde and ors, Writ Petition No. 9194/2018* decided by this Court at the Principal Seat on 5/12/2018, it was concluded that the disputant must be a Member of the Union for atleast six months, preceding the day on which the dispute is raised. In *Borosil Glass Works Ltd Employees Union Vs DD Bambode and ors, 2001 (1) Bombay Labour Cases, 343*, it has been held that the Section specifically provides that, it can be invoked only by a person, who has been a Member of such registered Trade Union for a period of not less than six months, which is prior to the date of reference i.e. the date on which the dispute is raised.

26 Even before this Court, the petitioners have stated on oath that they continue to be the members of the Union. The Union contends that it has a Membership of only 456 workers out of the total 743. The specific issue raised by the petitioners is that the Union, though has collected various amounts from these petitioners, has camouflaged the said contributions as being gratis payment made to the recognized Union towards the efforts put in by the Union as a recognized Union for arriving at long term settlements. Such disputed aspects can only be considered, after recording of oral and documentary evidence, which exercise can be performed only before the Industrial Court.

27 The petitioners cannot be rendered remedyless, inasmuch as, a peculiar dispute is raised by the petitioners in the backdrop of the admitted fact that they were the members of the recognized Union earlier. The continuance of their membership is now disputed. It would be appropriate for the Industrial Court to consider the oral and documentary evidence and conclude whether it is proved that the petitioners continue to be the members of the Union, until 6 months prior to the date of their application i.e. 14/5/2018. In this backdrop, it would be appropriate to record that if eventually, it is proved that either the petitioners were not members of the Union as in 2017-2018, or if it is revealed that the Union had suppressed and camouflaged

their membership, the Industrial Court could impose appropriate costs on that party which is found to have played a fraud.

28 These proceedings have already been remanded back to the Dy. Registrar, earlier. The consent certificate issued earlier, was quashed and set aside by this Court. By the impugned order, without discussing the documents placed before it, the Dy. Registrar has come to a conclusion that the applicants have not proved their membership and that they cannot demand the records of the Union to prove that they were members of the Union. In my view, this being a peculiar dispute wherein the petitioners are admittedly members of the Union earlier, and now the Union denies that they continue to be its members in the face of different types of contributions made by the petitioners, the Dy. Registrar should have referred the dispute to the Industrial Court for an adjudication. If the case of the Union is truthful, it need not fear an adjudicatory process in the peculiar backdrop of this case.

29 In Arun & Ors Vs. Member, Industrial Court & ors, 2011(3) LLJ, 826, this Court has concluded that the Industrial Court is required to find out as to whether the disputant before it, was or was not a member of the Trade Union. While dealing with this issue, the Industrial Court found that the enrollment of the petitioner itself, is not justified. It was thus concluded that

Section 28(1-A) confers the jurisdiction on the Court to go into the disputes that are referred to it by virtue of the consent certificate. Such consent letter, permits the holder thereof (the disputant) to approach the Industrial Court with the dispute that he has raised. This, therefore, settles the issue that the Dy. Registrar/Registrar Trade Unions is only discharging administrative function of assessing as to whether there is any dispute or not, and in doing so, he must *prima facie* gather that the disputant is a Member of the Union. In the peculiar case as like the one in hands, a disputant cannot be rendered remedyless in the face of a serious averment of continued membership which is *prima facie* supported by documents that their membership is being camouflaged so as to challenge their status and avoid the issuance of a consent certificate.

30 In view of the above, I find that it would be unnecessary to remand the matter again to the Dy. Registrar of Trade Unions. Considering the material available and such material in the custody of the Union, which can be produced before the Industrial Court, it would be improper to once again remand the matter to the Dy. Registrar and more so, when I find that a case of suppression of the membership of the petitioners and camouflaging their membership contributions under the guise of union donations, could be gone into by the Industrial Court.

31 As such, this Petition is allowed. The impugned order dated 29/1/2021 delivered by respondent no.2 is quashed and set aside. The said respondent Dy. Registrar of Trade Unions is directed to issue a consent certificate u/s.28(1-A) of the Trade Unions Act, 1926, on or before the 28th Day of February, 2022.

32 Rule is made absolute in the above terms.

33 At this stage, the learned Advocate for the Union prays for staying the operation of this order for a period of 8 weeks. The learned Advocate for the petitioners opposes the said request. Considering the facts and circumstances which I have taken into account while arriving at the above stated conclusion and since I have granted time to the Dy. Registrar to issue a consent certificate by 28/02/2022, the request of the Union, need not be entertained.

RAVINDRA V. GHUGE, J