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

WRIT PETITION NO. 6773 OF 2023

Maharashtra Samarth Kamgar Sanghatana ... Petitioner

V/s.

Excel Employees Union and Anr. ... Respondents

Mr. A.V. Bukhari, Senior Advocate with Ms. Fauzia Bukhari for the
Petitioner

Mr. Yogendra M. Pendse for Respondent No.1

Mr. Rajesh Gehani with Shraddha Chavan with Mahendra Agvekar
for the Respondent No. 2

***CORAM : NITIN JAMDAR , ACJ &
SANDEEP V. MARNE, J.***

DATE : 13 JUNE 2023

P.C. :-

Heard the learned Counsel for the parties. Taken up for
disposal.

2. This Petition challenges two orders passed by the
Industrial Court, Thane, both dated 17 April 2023. The first is
under Exhibit UA-9, and other is under Exhibit UA-10.

3. The Petitioner is a Union recognized under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices (MRTU & PULP) Act, 1971, with Respondent No.2 – Establishment. The Petitioner was granted the status of recognition following the order passed on 25 January 2018 by the Industrial Court. This order was challenged in this Court as well as in the Hon'ble Supreme Court; however, the challenge was negated.

4. Respondent No.1 filed an Application (MRTU) bearing No.16 of 2021 in the Industrial Court, Thane, under Section 13 of the Act of 1971. On 5 December 2021, the Petitioner appeared in the said proceedings and filed its say. The Petitioner also filed an application UA-9 that the Investigating Officer be directed to verify the membership. The two impugned orders came to be passed on 17 April 2023. By order under Exhibit UA-9 the Application filed by the Petitioner was partly allowed. Respondent No.1 was directed to produce copies of periodical returns as per Section 52 of the MRTU & PULP Act, 1971, read with Rule 146 of the Industrial Court Regulations, 1975. A similar direction was also issued to produce the list of member employees, Non-Applicant No.1 being the Petitioner. By the second order passed on the same day, the prayer of the Petitioner made for declaring membership of the workmen, whose membership have been collected by check-off system, as invalid was rejected.

5. We have heard Mr. A.V. Bukhari, Senior Advocate for the Petitioner, Mr. Y.M. Pendse, learned Counsel for Respondent No.1 and Mr. Rajesh Gehani, learned Counsel for Respondent No.2.

6. The learned Senior Advocate for the Petitioner has relied on the following decisions in the cases of (1) *Automobile Products of India Employees Union V/s. Association of Engineering Workers, Bombay and Ors.*¹, (2) *Teddington Chemical Kamdar Sangh v/s. Maharashtra General Kamgar Union*², (3) *Kothari Autoparts Manufacturing (Pvt) Ltd. v/s. Powar (K.R.) Member, Industrial Court of Maharashtra*³ and (4) *Tata Memorial Centre v/s. Tata Memorial Hospital Workers Union*⁴. These decisions are relied to contend that there is no reason at all as to why the enquiry under Section 13(1) by the Industrial Court, which is a full-fledged enquiry, in this case should not be with the aid of the Investigating Officers who have been appointed as per Section 8 of the Act of 1971 whose duties of the Investigating Officers show that they would act under the control of the Industrial Court and assist the Industrial Court in respect of verification of the membership of Union.

7. The learned Counsel for the Respondent No.1 sought to contend that there is no error in the procedure adopted by the

1 1990(2)SCC 444

2 1990(2) LLN 466

3 1979(1LLN) 576

4 2006(4) Mh.LJ 658

Industrial Court and that the Industrial Court has the necessary power under Section 30 of the Act of 1971 to issue such directions and also under Section 52 of the Act of 1971 every recognized Union has to submit the periodical returns of membership.

8. As regards the course of action adopted by the Industrial Court, we have not been shown any judicial pronouncement which supports the course adopted. On the other hand, we note the observations of the Division Bench of this Court in *Force Motors Limited v/s. Poona Employees Union and Others* in paragraphs 18 thereto where the Division Bench has indicated that once an allegation is made that a representative – union has lost its character within Section 11 of the Act of 1971, the burden is not on it to prove otherwise. Reference is also made to the decision in the case of *Automotive Products of India*.

9. Since it was the contention of Respondent No.1 – Union that the Petitioner is resisting to produce the record, a query was made to the learned Senior Advocate for the Petitioner. The learned Counsel for the Petitioner submitted that the Petitioner does not resist producing the record necessary for verification but has taken an exception to the procedure adopted by the Industrial Court and will produce the necessary record for verification before the Investigating Officer as is required by the law. Therefore, the apprehension expressed by the learned Counsel for the Respondent No.1 that the

Petitioner is attempting to avoid to producing the necessary documents does not survive. We also find no reason when the Petitioner has volunteered for the appointment of the Investigating Officer and that the Investigating Officer has a duty under the law to assist the Industrial Court that the course of action of verification by the Investigating Officer should not be adopted in this case. This would bring certainty in the matter. As regards the speedy resolution of the controversy is concerned, suitable directions can be issued.

10. As regards the challenge to the order under Exhibit UA-10 is concerned, this is an interim order, and it is not necessary for us at this stage to examine the legality of the same. If a final order is against the Petitioner, the Petitioner can take up this issue in its challenge to the final order.

11. Accordingly, we quash and set aside the order dated 17 April 2023 passed under Exhibit UA-9 of Application (MRTU) No. 16 of 2021 and substitute the same with the following directions:-

- (i) The Application filed by the Petitioner under Exhibit UA-9 is allowed by directing the concerned Investigating Officer to verify the membership record of the Union to find out the factual membership of the concerned Union and submit a report to the Industrial Court.

(ii) The Petitioner and the Respondent Union, if not already submitted their records, shall do so within a period of one week.

(iii) The Investigating Officer will carry out the investigation thereafter within a period of three weeks and submit its report to the Industrial Court.

(iv) Once the report is so submitted, the Industrial Court will conclude the proceedings as early as possible. The time granted for final disposal of the proceedings by the learned Single Judge of this Court by order dated 14 March 2023 stands extended by a further period of three months.

(v) Needless to state that the record produced by the rival Union, if any of the Unions seek the inspection thereof, the Investigating Officer will provide the same.

(vi) The above timeline will operate from the date this order is uploaded.

12. Writ Petition is accordingly disposed of.

SANDEEP V. MARNE, J.

ACTING CHIEF JUSTICE