



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9808 OF 2021

New Panther Kamgar Sena,
Forbes Housing Society,
Trimurty Chowk, MIDC, Bajaj Nagar,
Aurangabad - 431001,
Through Its President

...Petitioner

Versus

1. NRB Bearing Pvt. Ltd.
C-6, Additional MIDC Area,
Jalna, Dist. Jalna - 431213,
Through Its Managing Director.
2. All Marathwada Kamgar Union,
At Khokadpura, Aurangabad,
Currently operating from
V. D. Deshpande Hall, N-7,
CIDCO, Aurangabad - 431001,
Through its General Secretary.
3. Panther Power Kamgar Sanghatana
Mahatma Phule Nagar, Peer Bazar,
Usmanpura, Aurangabad - 431001
Through its Secretary.

...Respondents

Mr. T. K. Prabhakaran a/w Mr. A. S. Kulkarni, Advocate for the Petitioner
Mr. S. V. Dankh, Advocate for Respondent No. 1 (through VC)
Mr. A. B. Gaikwad Patil, Advocate for Respondent No. 2

CORAM : R. M. JOSHI, J.

DATE : 10th DECEMBER, 2024

JUDGMENT :-

1. By consent of both sides, heard finally at the stage of

admission.

2. This petition takes exception to the order passed below Exhibit C-42 whereby application filed by the petitioner - Trade Union to add itself as a party to the proceeding bearing application MRTU No. 1/2015 for seeking recognition filed by Respondent No. 2, came to be rejected by the Industrial Court, Jalna.

3. The petitioner claims to be a trade union registered under the Trade Unions Act. It also claims to be representing the employees of respondent No. 1 Company. Such claim of membership of these employees is from year 2018. It is the case of the petitioner that respondent No.3 (Panther Power Kamgar Sanghatana) was existing in the Company at the relevant time and was representing the workmen of the company. It however became defunct and hence the petitioner is entitled to be joined itself as a party to the proceedings filed for recognition filed by the respondent No.2 (All Marathwada Kamgar Union). Therefore, an application was filed vide Exhibit C-42 to make petitioner party to the said proceedings. The said application came to be rejected on the ground that the petitioner Union was not in existence at the time of the filing of the application which is concerned with the membership of the employees for the period of six months prior to filing of the same.

4. Learned counsel appearing on behalf of the petitioner/Union submits that in view of the provisions of Section 12 read with Section 19 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Laws Act, 1971 (for short '**the Act**'), it is not only for the Trade Union but also even to the employees of the undertaking to raise objection to the grant of recognition to the union. It is his submission that it is not necessary that the Trade Union must exist at the time of filing of the application and any union which gains membership of the employees even at a later point of time will have to be permitted to raise objection to the grant of recognition. It is his submission that for the purpose of recognition, the membership of the applicant Union only is not relevant but also compliance of Section 19 of the Act is mandatory and non-compliance thereof could be established by Petitioner. It is his further submission that in any case, respondent No.3 was a party to the said application and as such, there is no justification for denying the present petitioner/Union to be join as a party to the said proceeding being successor thereof. He further argued that the Respondent No. 2/Union is a union sponsored by the employer and it is not in the interest of the employees. He also submitted that if recognition is granted to Respondent No. 2, Petitioner would not be able to seek de-recognition for a period of at least one year. He has placed reliance on the judgment of Hon'ble Supreme Court ***Vegetable Vitamin Foods Employees Union***

Versus Sarva Shramik Sangh, 2006(9)CPSC781, to seeks directions similar to the one issued therein.

5. Learned counsel for respondent No.2/Union supported the impugned order on the ground that unless, the union was in existence at the time of filing of the application, it is not open for such Union to raise objection to the grant of recognition. He also argued that the objections which were not taken pursuant to notice issued by Industrial Court under Section 12, cannot be allowed to be raised now.

6. Before considering the factual matrix, it would be necessary to appreciate scheme of recognition of a trade union under the provisions of Act of 1971. Chapter III of the Act deals with the recognition of unions. Section 10 makes it clear that the said chapter applies to every undertaking where 50 or more employees are employed or were employed on any day preceding 12 months. Thus, if the number of employees employed in an undertaking at any time, falls below 50 continuously in a period of an year, the provisions of this chapter ceases to apply to such undertaking. In so far as present case is concerned, admittedly, the employees employed by respondent/employer are more than 50 at all points of time and as such, the chapter III has application to the present case.

7. Section 11 contemplates and lays down the procedure for recognition of a union. A union which is desirous of being registered as a recognized union in any undertaking has to make an application to the Industrial Court for the said purpose. The condition precedent for making such application is that the union may not have less than 30 percent of the total number of employees in that undertaking as its numbers for the whole of the period of six calendar months immediately preceding the calendar month in which it makes an application.

8. Section 12 requires Industrial Court on such an application being received under Section 11 of the Act to call upon the employer to display on notice board of the undertaking for which recognition is sought, stating therein that the Court intends to consider the said application on the date specified in the notice. Said notice also to call upon other union or unions, if any, in the undertaking as well as employees or employer affected by the proposal of recognition to show cause within a prescribed time as to why recognition ought not to be granted to the applicant union. It is after considering the objections if any received and after holding such inquiry in the manner as it deems fit the Industrial Court to come to the conclusion as to whether the applicant union satisfies the conditions as stipulated in Section 11. The Industrial Court is also required to satisfy itself that the conditions

contemplated by Section 19 of the act are also fulfilled in order to issue Certificate of Recognition to such union.

9. The aforestated provisions, therefore, clearly demonstrate that the union which desires to seek recognition must prove that for preceding six months of making the application for recognition, the union has not less than 30 percent of membership amongst employees of the employer. So also that the union satisfies the condition specified in Section 19 of the Act. Section 12 mandates that an employer, any union functioning in the undertaking or even employees who are affected by the proposal for recognition are to show cause within a prescribed period as to why recognition should not be granted to the applicant union. Section 11 also mandates the decision of the application within a period of three months from the date of receipt of the application if the concerned undertaking is situated in the same local area and in any other case within four months.

10. These provisions are essentially in order to ensure that the interest of the industrial establishment as well as the workmen is taken care. The requirement of the decision on such application within a period of three/four months indicates that the issue of recognition of an union cannot be deferred for a longer period. There could even be a situation

that the employer is interested to oppose grant of recognition to a union, as employer is mandatorily required to hold negotiations/settlement etc with it. Apart from this, office bearers of the recognized union are having certain privileges and protections under the law which employer may want to deny. It is not unknown phenomenon to the trade union field that employer sponsors union of the workmen and, therefore, provisions is made in the Act to treat such act on part of the employer to be unfair labour practice. Schedule III of the Act enumerates the acts of employer which amounts to unfair labour practices. Items 2 and 3 are relevant for the purpose of present Petition. The legislature, therefore, has taken care that an employer is not allowed to cause interference in the trade union activities in any manner. The time frame provided for decision of application for recognition assumes importance from this angle too. So also, shifting of loyalty of workmen is not seldom. Ultimately, both situations are not only against the interest of the workmen/union but also not conducive to the industrial peace.

11. These provisions, therefore, underline the intention of the legislature behind calling upon the parties to raise objection to the recognition within the prescribed period as notified in the notice issued by the Industrial Court under Section 12 of the Act. The mandate of the law for conclusion of the decision on such application within three

months or four months, as the case may be, further confirms the time frame required to be adhered by the Court.

12. Reverting back to the facts of the present case, it is not in dispute that on 09.04.2015 Respondent No. 2 – Union filed Application (MRTU) 1 of 2015 for recognition under Section 11 of the Act. Respondent No. 3 was joined as party to the said application. Pursuant to notice issued by Industrial Court under Section 12 of the Act, employer and another Trade Union existing in undertaking filed written statements. The employer recorded no objection for grant of recognition. Whereas Respondent No. 3 – Trade Union objected to the same by filing written statement in the form of denial. Pertinently, none of the employees of Respondent No. 1 – Employer raised objection to the grant of recognition nor denied membership of the Applicant Union. It is pertinent to note that Petitioner herein does not claim that there is no membership of the Respondent No. 2 Union (Original Applicant) in the undertaking of Respondent No.1 – Employer.

13. It is not disputed that Petitioner Union was non existent in the undertaking when application for recognition is filed. It is claimed to have been formed in 2018. At this stage, it would be relevant to take note of the order passed by this Court in Writ Petition No. 8583/2019 which is relied upon by Petitioner. Perusal of the said judgment shows

that the Employer entered into settlement with All Marathwada Kamgar Union (Respondent No. 2 herein /Original Applicant) on 13.12.2017. The settlement signed by this Union is accepted by all workmen of the undertaking including persons who claimed to be members of Petitioner Union. Thus, this fact shows that there is no *prima facie* substance in the contention of the Petitioner that Respondent No. 2 Union is against interest of the workmen.

14. It is sought to be argued on behalf of the petitioner that the respondent No.3 was in existence at the relevant time and, therefore, was made a party to the said proceeding and since it is defunct, the present petitioner has a right to represent the employee that this petitioner is succeeding the said Union. As far as this contention is concerned, first of all petitioner cannot be said to be the successor of the respondent No.3 for the simple reason that it is independent registered Trade Union. The membership of the said Union cannot be said to have been transferred to Petitioner Union. The Petitioner Union can only claim its membership from year 2018. Thus, question of substitution of one union for another does not arise.

15. Similarly, this Court *prima facie* finds no substance in the contention of the Petitioner that Respondent No. 2 is not a registered trade union. Had it been so an objection would have been raised before

this Court in Writ Petition No. 8583/2019 in that regard. Perusal of the judgment passed therein does not show any such issue being raised by Petitioner.

16. Since the relevant provisions require Respondent No. 2 (Original Applicant) to prove that it had membership of not less than 30% amongst in the employees of undertaking and also to show that it complies with requirements of Section 19, the Union which did not exist would not be in a position to stake claim in respect of membership amongst employees at relevant time nor could raise issue with regard to the compliance of Section 19 of the Act, which compliances are internal matters of the Union which seeks recognition. Similarly, because an application would be required to be filed for cancellation if recognition is granted to respondent No.2, can never become ground for implement of petitioner. The provision of Section 13 adequately deal with the situation in which cancellation of recognition of a union is required. So also Section 14 of the Act enables any union to get recognition in place of recognized union. Thus, having regard to these statutory provisions, this Court finds no merit in the contention of petitioner that it would have to initiate proceeding for cancellation or recognition in place of respondent No.2, if it is granted to it.

17. It is clear from above quoted provisions of the Act that for

the purpose of grant of recognition, period of six months preceding the date of filing of application is relevant. It is not open for the Industrial Court to consider any other period for grant of recognition. The judgment in case of **Vegetable Vitamin Foods** (supra) indicates that the Hon'ble Supreme Court in its discretion has directed Industrial Court to consider a particular date, which is not date of filing of application for purpose of determination of membership. In respectful view of this Court, this judgment would not apply to present case. In any case, issue before this Court in this Petition is as to whether the Petitioner Union which did not exist during relevant period or at the time of filing of application can be allowed to be joined as party Respondent to application for recognition.

18. In considered view of this Court and having regard to the provisions of the Act, it would not be open for a Union to seek impleadment as party to the application for recognition, in case such Union does not exist in the undertaking when notice is issued by the Industrial Court under Section 12 of the Act seeking show cause from Union/Employer/Employees within a prescribed time. Moreover, in the facts of the present case, the petitioner Union is not entitled to become party to the proceedings of Application (ULP) No. 1/2015.

19. As a result of above discussion, this Court finds no merits in the Petition. Hence, order impugned stands confirmed and Petition is

dismissed.

20. At this stage, learned counsel for the petitioner seeks continuation of the order dated 08.09.2021 passed by this Court for a period of 8 weeks to take exception to the present judgment before the Hon'ble Supreme Court.

21. Learned counsel for the contesting respondent No. 2 opposes the said prayer.

22. Undisputedly, there is relief in favour of the petitioner since 08.09.2021. In such circumstances, this Court finds no reason not to extend the said order for a reasonable period from today. Accordingly, this order is extended for the period of six weeks.

(R. M. JOSHI, J.)

bsj