

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3170 OF 2021**

Krantikari Kamgar Union

.. Petitioner

Versus

1) Hindustan Unilever Ltd.
2) Bhartiya Kamgar Sena

.. Respondents

WITH

WRIT PETITION NO. 13141 OF 2019

Krantikari Kamgar Union

.. Petitioner

Versus

Hindustan Unilever Ltd.

.. Respondent

...

Mr. Sanjay Singhvi, Senior Advocate a/w Mr. Rahil Fazelbhoy i/b Rahul Kamerkar for Petitioner in WP/3170/2021.

Mr. Sanjay Singhvi, Senior Advocate a/w Mr. Rahil Fazelbhoy i/b Bennet D'costa for Petitioner in WP/13141/2019.

Mr. Mayuresh D. Nagle for Respondent in WP/3170/2021.

Mr. Melvyn Fernandes for Respondent No.1 in WP/13141/2019.

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CORAM	: SANDEEP V. MARNE J.
RESERVED ON	: 6 MAY 2024.
PRONOUNCED ON	: 9 MAY 2024

JUDGMENT :-

1) These two Petitions are filed by Krantikari Kamgar Union in respect of its grievance about rejection of its application for registration as recognised union as well as deduction of membership fees from its members for being paid to the rival union-Bharatiya Kamgar Sena. Writ Petition No.3170 of 2021 is filed challenging the Judgment and Order dated 11 December 2019 passed by Industrial Court, Kolhapur rejecting Petitioner's Application for registration as recognised union under Section 14 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU and PULP Act**). Writ Petition No. 13141 of 2019 is filed challenging the Judgment and Order dated 19 March 2019 by which Petitioner's Complaint for refund of membership fees deducted from wages of its members for payment to Bharatiya Kamgar Sena has been rejected.

2) Briefly stated, facts of the case are that Hindustan Unilever Ltd. is a public limited company engaged in the business of manufacturing and marketing of various products at its various factories all over India, with one of the factories at Lote-Parshuram, Chiplun, Tal. Khed, Dist. Ratnagiri. It appears that the workers employed in Respondent Company had formed union named Bharatiya Kamgar Sena (**BKS**), which was registered as a 'Recognised Union' under provisions of MRTU and PULP Act. After formation of Petitioner-Union, it is Petitioner's case that 149 workers, who were erstwhile members of BKS resigned from the said Union and became members of Petitioner Union on 8 October 2012. Accordingly, Petitioner Union gave intimation of such workers joining it to Respondent Company on 8 October 2012. By letter dated 15 December 2012, President of the Petitioner Union forwarded letters of resignation signed by the said 149 members to BKS. By separate letter dated 15 December 2012, Petitioner Union informed the

Respondent Company that the said 149 workers had become its members and intimated the names of committee members for holding discussions. According to Petitioner, about 169 workers submitted letter dated 24 December 2012 to the Respondent Company requesting it to deduct membership subscription fee for Petitioner Union and not to deduct the same in respect of Bharatiya Kamgar Sena. It is submitted that the said 169 workers also included 20 workers who were not members of BKS and whose membership fees were never deducted by the Respondent Company. According to Petitioner, the workers who had joined Petitioner Company were deliberately being harassed and accordingly Petitioner Union complained on 24 December 2012 in respect of such harassment.

3) A Notice was published by Factory Manager of Respondent Company on 1 January 2013 stating that BKS had submitted letter dated 15 December 2012 for deduction of Union membership and accordingly Union membership fees of Rs.120/- was proposed to be deducted from salary payable for December 2012 and handed over to BKS. Objections were invited to such deduction to be raised on 1 and 2 January 2013. According to Petitioner Union its members were apprehensive about filing individual objections and also on account of various reasons such as creation of confusion, members on leave etc, none of the workers gave any individual objection letter to the Notice. When members of Petitioner Union received their pay slips for the month of December 2012, they discovered that an amount of Rs.120/- was recovered towards union membership fees for BKS. Petitioner Union raised a protest and demanded for refund of such deducted amount towards Union fees BKS by letter dated 14 January 2013. As Petitioner did not receive any reply, it filed Complaint (ULP) No.53 of 2013 before Industrial Court, Kolhapur seeking refund of subscription fees of Rs.120/- illegally deducted from its members' salaries for being paid to BKS. The Complaint was resisted by the employer by filing written statement.

4) Petitioner Union also filed Application MRTU No.05 of 2013 seeking registration as a recognised Union under Section 14 of MRTU and PULP Act, 1971 before Industrial Court, Kolhapur. In Application (MRTU) No.05 of 2013, Petitioner Union filed Application at Exhibit U-7 raising the issue of maintainability of the same. Industrial Court passed common Order dated 7 February 2015 rejecting the objection of maintainability and directing appointment of Investigating Officer to investigate the membership of Petitioner Union as well as BKS during the period of proceeding 6 calendar months from the date of Application.

5) The Investigating Officer accordingly conducted investigations and submitted Report dated 4 January 2016 holding that out of 167 members of Petitioner Union, 140 members were common, leaving only 27 exclusive members of Petitioner Union. Similarly, out of 279 members of BKS, 140 members were common and BKS had 139 exclusive members. Accordingly it was opined that taking into consideration common members the strength of Applicant Union was 49.40% whereas that of BKS was 82.54%. After deducting common members, the strength of Petitioner Union was 7.91% whereas that of BKS was 41.12%. Petitioner Union raised objection to the report of Investigating Officer.

6) The Industrial Court first took up Complaint (ULP) No.52 of 2013 relating to refund of subscription fees and by its Judgment and Order dated 19 March 2019 it proceeded to dismiss the same. The Industrial Court thereafter took up Application (MRTU) No.05 of 2013 filed by Petitioner Union for registration as recognised union and by its Judgment and Order dated 11 December 2019, it has dismissed the same.

7) Petitioner Union is aggrieved by Judgment and Order dated 19 March 2019 passed in Complaint (ULP) No.53 of 2013 and has filed Writ

Petition No.13141 of 2019. For raising challenge to the Judgment and Order dated 11 December 2019 passed in Application (MRTU) No.05 of 2013, Writ Petition No. 3170 of 2021 is filed.

8) Mr. Singhvi the learned senior advocate appearing for Petitioner Union would submit that the Industrial Court has erred in rejecting the Application filed by Petitioner Union for its registration as recognised Union under Section 14 of MRTU and PULP Act. He would submit that the Industrial Court has recorded a factual incorrect finding that Petitioner Union did not submit individual letters of resignation to BKS. He would submit that such individual letters of resignation were filed before the Industrial Court. That if there was any doubt about submission of those individual letters of resignation, BKS ought to have examined at least one member who could have disowned submission of such recognition letter. He would further submit that BKS Union did not lead any evidence to counter the evidence of two witnesses led by Petitioner Union. That Mr. Rajendra Mahadev Ghag, Chairman of the Petitioner Union was examined as witness, who gave specific evidence about tendering of individual letters of resignation and along with covering letter address by its President. That the witness further stated that the individual letters of resignation were produced on the file of Investigating Officer. That despite availability of such direct evidence, the Industrial Court has erred in holding that individual letters of resignation were not submitted to BKS.

9) Mr. Singhvi would further submit the Industrial Court has doubted the factum of submission of letter dated 24 December 2012 signed by 169 workers without any basis. That there was no evidence available on record to raise a doubt about submission of the said letter. That the findings recorded by the Industrial Court in respect of letter dated 24 December 2012 is based on surmises and conjunctures.

10) Mr. Singhvi would further submit that the Investigating Officer erred in treating members of Petitioner Union as common members when in fact they had resigned from membership of BKS and had requested for deduction of Union subscription fees for Petitioner Union to the employer. That the said members were erroneously treated as common members and added to the membership of the BKS. That upon addition of entire common members to Petitioner Union, the total members of Petitioner Union were 167 as against only 139 members of BKS. That Petitioner thus had the largest membership of amongst employees of the Respondent company. That the Industrial Court therefore ought to have allowed Union's Application for registration as recognised Union.

11) So far as Writ Petition No. 13141 of 2019 is concerned, Mr. Singhvi would submit that Respondent Company clearly erred in deducting membership for BKS despite knowledge of the fact that several workers had resigned from membership of BKS and had requested Respondent Company to deduct subscription for Petitioner Union and not for BKS. He would fairly submit that the main dispute is about registration of Petitioner union as recognised union and that the issue of refund of membership fees deducted from salary for December 2012 is, in that sense, rendered academic

12) Mr. Nagle the learned counsel appearing for Respondent No.2 in Writ Petition No. 3170 of 2021 (Bharatiya Kamgar Sena) would oppose the Petitions and support the Order passed by the Industrial Court. He would submit that the witnesses of Petitioner Union gave specific admissions in their cross examination about failure to submit copy of resignation letter. That Mr. Rajesh Natekar gave a specific admission that no person had resigned from membership of BKS by giving individual resignation letter. He would submit that despite publication of specific notice dated 1 January 2013, not even a single alleged member of Petitioner Union

raised objection about deduction of subscription for BKS. That Petitioner's witness also gave admission about failure to raise such objection. According to Mr. Nagle, in the light of evidence led by witnesses of Petitioner, it was not even necessary for BKS to lead separate evidence. That there is no perversity in the findings recorded by Industrial Court. That the Investigating Officer rightly excluded common members in absence of proof of resignation by them. That under Chapter III of MRTU and PULP Act, minimum number of members required in recognition of a Union is 30%. That Petitioner Union had only 7.89% workers as its members. That even as of today out of 334 workers, 213 workers are members of BKS, which is undoubtedly has the largest membership of employees employed in Respondent Company.

13) So far as Writ Petition No. 13141 of 2019 is concerned Mr. Nagle would submit that established practice of deducting yearly subscription of members for the recognised Union was admitted. That Petitioner's witness stated before the Industrial Court that none of the office bearers of Petitioner Union gave any response the letter dated 1 January 2013. That in absence of any objection being raised, there is no question of refunding the amount of membership deducted from workers' salary. Mr. Nagle would therefore pray for dismissal of both the Petitions.

14) Mr. Fernandes the learned counsel appearing for Respondent – Hindustan Unilever Ltd. would oppose the Petitions justifying its actions in deducting the membership subscription in pursuance of notice dated 1 January 2013. He would submit that though the Respondent employee does not desire to take side of any Union, substantial delay in decision of Petitioner's Application itself was a good ground for not allowing its Application for registration. He now submitted that by now, period of 12 years has elapsed and that issue of recognition must be decided on the basis of the current position. He would pray for dismissal of the Petitions.

15) Rival contentions of the parties now fall for my consideration.

16) The essential contest between Petitioner Union and BKS is about registration as recognised Union under Chapter III of MRTU and PULP Act. It is undisputed position that BKS was a recognised Union at the relevant time under provisions of Sections 11 and 12 of the MRTU and PULP Act. Petitioner Union did not seek cancellation of recognition or suspension of rights of BKS under Section 13. What it is sought was recognition of itself under provisions of Section 14 of the Act which reads thus:

“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 or 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 month 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 employed 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.”

17) Thus under Section 14, any Union can make an application to the Industrial Court for being registered as a recognised union in place of a recognised union already registered on the ground that it has largest membership of employees employed in the undertaking. In the present case Petitioner Union made such Application on the strength that in the month of February 2013 to October 2013 it had the largest membership.

18) As observed above, in pursuance of Order passed by the Industrial Court on 7 February 2015, Investigating Officer was appointed to verify membership of Petitioner Union and of BKS during the period of proceeding 6 calendar months from the date of the application. Accordingly, the Government Labour Officer acted as Investigating Officer and after conducting the process of verification, submitted Report dated 4 January 2016. The Report indicated that Petitioner Union presented names of 167 eligible members. On the other hand, BKS

submitted names of 279 eligible members. The Investigating Officer observed that 140 workers were shown as members both by Petitioner Union as well as by BKS. The Investigating Officer therefore calculated percentage of membership of both the Unions and appointed as under:

Percentage of membership of Applicant Union (KKU)

Including common membership as 49.40%

Excluding common membership as 7.89%

Percentage of membership of Non-Applicant Union (BKS)

Including common membership as 82.54%

Excluding common membership as 41.12%

19) The Industrial Court has proceeded to hold that Petitioner Union failed to show largest membership during the relevant period than BKS for the purpose of getting the status of recognised Union.

20) Petitioner's contention is that the Investigating Officer has erroneously considered 140 workers as common to both the Petitioner Union as well as BKS. According to Mr. Singhvi, the said 140 workers ought to have been shown exclusively as members of Petitioner Union. To do so, it was necessary for Petitioner Union to prove before the Industrial Court that the said 140 workers had individually resigned from membership of BKS. To prove so, Petitioner Union relied upon letter dated 15 December 2012 with which allegedly individual resignation letters signed by each of the worker were submitted to BKS. There was factual dispute before Industrial Court about actual submission of those letters by individual workers. In my view, if each of the 140 workers had resigned from membership of BKS, those workers ought to have submitted their individual resignation letters to BKS and obtained acknowledgments thereon. What is done in the present case is addressing of a covering letter of Petitioner Union through which the individual resignations letters were allegedly forwarded. While it may be true that approaching BKS individually by each of 140 workers might be difficult or

even dangerous, as claimed by Mr. Singhvi, what ought to have been done was to dispatch the individual resignation letters by Registered Post AD, so as to dispel any doubt about submission of such individual resignation letters. This was necessary considering the fact that the issue of recognition hinges on number of members. Therefore how many individual letters of resignation were actually dispatched along with President's covering letter could always be questioned. Petitioner-union still took the risk of dispatching the alleged individual letters of resignation through covering letter of its President. However even if this aspect is to be ignored on the grounds of convenience and/or financial capacity of each worker to dispatch individual resignation letters, the evidence led on behalf of Petitioner-union destroys its case completely.

21) When witnesses produced by Petitioner Union were cross-examined, they gave clear admissions which creates serious doubts about submission of individual resignation letter by any worker. Petitioner Union's witness Mr. Rajesh Natekar stated unequivocally in his cross examination that "*it is true that no person has resigned from the membership of the non-Applicant Union by giving individual resignation letter*". Thus, the Unit Secretary of Petitioner Union gave specific admission about non-submission of individual resignation letter by any of the worker. Even Mr. Rajendra Ghag's testimony does not prove submission of individual resignation letters to BKS. His statement in the pre-drafted Affidavit-of-Evidence about submission of individual resignation letters is falsified by specific admission given by the Unit Secretary Mr. Natekar in the cross examination.

22) Yet another factor to be considered to draw inference of non-submission of individual resignation letters is admitted failure on the part of any of alleged members of Petitioner Union to raise objection in respect of Notice dated 1 January 2013 published by Respondent employer. It is an admitted position that

neither any of its alleged member not any office bearer of Petitioner Union raised any objection for deduction of membership subscription for being paid to BKS from salary of December 2012. If 140 workers had indeed resigned from membership of BKS on 8 October 2012, it is inconceivable that they would agree for deduction of membership fee for being paid to BKS in December 2012. Thus there is clear acquiescence on the part of workers in not raising any objection for deduction of membership fees for payment to BKS.

23) In my view in the light of specific admission by the unit secretary Mr. Rajesh Natekar none of the workers had resigned for membership of BKS, coupled with failure to raise objection to Notice thereby paying membership fees to BKS, left no manner of doubt for the Industrial Court to hold that 140 workers had not resigned from the membership of BKS.

24) In my view therefore, no serious flaw can be found in the approach of the Industrial Court in not counting 140 workers as members exclusively of Petitioner Union. After counting common members for both Unions, membership of Petitioner Union was 49.40%, whereas that of BKS was 82.54%. If common members were to be excluded from membership of both the Unions. Petitioner's membership of 41.12% of BKS. Thus, seen from any angle, Petitioner Union miserably failed to demonstrate before the Industrial Court that it had the largest membership of employees employed in the establishment, which is a prerequisite under Section 14 of the MRTU and PULP Act. The industrial Court has thus rightly dismissed Application for grant of registration as recognised Union filed by the Petitioner.

25) So far as Writ Petition No.13141 of 2019 is concerned, Mr. Singhvi has fairly submitted that the issue of refund of membership fees deducted in the month

of December 2012 is not of much significance as compared to the issue of grant of registration as recognised Union. Even otherwise, once it is held that Petitioner Union could not have been granted registration as recognised Union under section 14 by MRTU and PULP Act on account of its failure to prove largest membership of employees employed in the establishment, the issue of refund of membership fees of Rs.120/- deducted from salary of December 2012 is rendered academic. I have also held that Petitioner's Union have failed to prove that individual resignation letters were tendered by alleged members to BKS. In that view of the matter, relief of refund of membership fees cannot otherwise be granted to the Petitioner Union.

26) Considering the overall conspectus of the case, I am of the view that both the Judgments and Orders of the Industrial Court do not suffer any patent illegality so as to warrant interference in exercise of writ jurisdiction by this Court under Article 227 of the Constitution of India. Both the Writ Petitions are devoid of merits. They are dismissed without any orders as to costs.

[SANDEEP V. MARNE J.]