

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

WRIT PETITION NO. 9898 OF 2014

Bharatiya Kamgar Sena ... Petitioner
versus
Haffkine Bio Pharmaceutical & Anr. ... Respondents

**WITH
INTERIM APPLICATION NO. 2367 OF 2023
IN
WRIT PETITION NO. 9898 OF 2014**

Hind Kamgar Sanghatana ... Applicant

IN THE MATTER BETWEEN

Bhartiya Kamgar Sena ... Petitioner
versus
Haffkine Bio Pharmaceutical Corporation
Ltd. and Another ... Respondents

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Mr.Pankaj M. Patel for the Petitioner.
Ms.Seema Chopda with Mr.T.R.Yadav for the Applicant/
Respondent No.2.
Ms.Tanaya Patankar with Ms.Nutan Patankar for Respondent No.1.

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**CORAM : NITIN JAMDAR &
M.M.SATHAYE, JJ.**

DATE : 15 April 2024

P.C.:

Heard the learned Counsel for the parties.

2. The Petitioner has challenged the order dated 4 October 2014 passed by the Industrial Court, Pune in Application (MRTU) No. 7 of 2008.

3. Respondent No.2 / Applicant had filed an application for registration as recognized union under Section 14 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labor Laws Practices Act, 1971 (the MRTU & PULP Act). Respondent No.2/ Applicant alleged that it had a membership with Respondent No.1- Undertaking for the period of six calendar months immediately preceding the month in which the application was made in 2008. In the month of March 2008, it had 80 members and this membership was continued till September 2008 which comes to 63% of the total strength of the said Undertaking. Based on this position, Respondent No.2/ Applicant sought to recognize itself under Section 14 of the MRTU & PULP Act. The Petitioner contested the application and the assertion of Respondent No.2 / Applicant regarding membership. The Industrial Court appointed an Investigating Officer, which is the procedure, to submit a report regarding details after ascertaining which union is in majority. In the report, the Investigating Officer stated that out of total strength of 127 workers working in Respondent No.1, Respondent No.2/ Applicant is having a strength of 74 workmen and the percentage comes to 58%. As against this, the Petitioner is having strength of 39% employees. It is also stated in the report that 41 common members were

interrogated by the Investigating Officer in a closed room and thereupon the report was submitted. Based on the report, Respondent No. 2/ Applicant was declared as recognized union and the application of Respondent No.2/Applicant was allowed, and consequently, the recognition of the Petitioner union as recognized union was cancelled.

4. This petition came up on board on 5 November 2014. The Division Bench while issuing notice stayed clause (4) of the operative part of the impugned order dated 4 October 2014 regarding issuance of certificate. The petition has remained pending since then. Thereafter, Respondent No.2/Applicant has taken out an application for vacating the ad-interim stay granted by order dated 5 November 2014.

5. As per the procedure, under Section 14 of the MRTU & PULP Act, when the application for recognition is made or application for cancellation of recognized union is made, ordinarily, the Industrial Court appoints an Investigating Officer to submit a report after the examining the strength of the membership. In this case, if there are common members, they are interrogated to find out status of their membership. This is, thus, *in praesenti* situation and the memberships can undergone a change by passage of time. Therefore, today the position is where though the impugned order was passed on the basis of the investigation report and allowing the

application of Respondent No.2/Applicant, more than 16 years have gone by since the Investigating Officer submitted a report.

6. The learned Counsel for Respondent No. 2 sought to submit that an additional affidavit will be filed to show the strength. The learned Counsel for the Petitioner submitted that the Petitioner will also file an additional affidavit. There has to be certainty as regards the membership and if the membership has undergone a change, then practical difficulty would arise. Proceeding on the position of 2008, it is not possible for this Court to take evidence and interview the workmen as the Investigating Officer had done to ascertain the position.

7. In these circumstances, considering the fact that by earlier order, the impugned order has not come into effect, and so that there is quietus in the establishment of the one. According to us, it would be appropriate that the application of Respondent No.2 /Applicant needs to be restored to the file of the Industrial Court who will carry out exercise as per Section 14 of the MRTU & PULP Act and will the procedure laid down therein to determine the rival strength.

8. In these circumstances, the impugned order dated 4 October 2014 is quashed and set aside. We make it clear that the order is not set aside on merits, but in view of the above position. The application of Respondent No.2 /Applicant is restored to the file of

the Industrial Court, Pune. The Industrial Court will follow the procedure laid down under Section 14 of the MRTU & PULP Act and take a decision afresh on the application of Respondent No.2/ Applicant within a period of four months from today.

9. As regards the period be considered, it is left to the Industrial Court to decide. Apart from deciding which period is to be considered, further enquiry is to be carried out by the Industrial Court. The factual enquiry in respect of strength of rival union will be carried out by the Industrial Court as above.

10. We keep all contentions of the parties open.

11. Writ Petition is disposed of in the above terms. In light thereof, the Interim Application also stands disposed of.

(M.M.SATHAYE, J.)

(NITIN JAMDAR, J.)