



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 3251 OF 2025

Lokmat Shramik Sanghatana, C/o Pundlik Gaikwad,
Near Jaymata School, Plot No.49, Sai Nagar, Dighori,
Umrer Road, Ring Road Square, Nagpur – 440 034.
Through its General Secretary.

PETITIONER

VERSUS

M/s Lokmat Media Private Limited (Earlier known as
M/s Lokmat Newspapers Pvt.Ltd.), Lokmat Bhawan,
Pandit Jawaharlal Nehru Marg, Nagpur – 440 012.
Through its Managing Director.

RESPONDENT

Shri S.D. Thakur, Counsel for the petitioner.
Shri M.G. Bhangde, Senior Advocate with R.M. Bhangde, Counsel for the
respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE ON WHICH ARGUMENTS WERE HEARD : SEPTEMBER 17, 2025

DATE ON WHICH JUDGMENT IS PRONOUNCED : NOVEMBER 03, 2025

JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the counsel for the parties.

2. The petitioner, claiming to be a recognized Union, has invoked Article 227 of the Constitution of India by the instant petition challenging the order dated 29.04.2025 passed by the Industrial Court, Nagpur whereby the application filed by the respondent questioning the maintainability of the complaint under Section 33A of the Industrial Disputes Act, 1947 (for short, ‘the Act of 1947’) came to be allowed.

3. The main controversy involved in the instant writ petition is whether a complaint filed by a Union of employees challenging dismissal of individual employees is maintainable in view of the proviso to Section 36(1) of the Act of 1947, introduced by State of Maharashtra Amendment.

4. The genesis of the instant petition lies in the order of termination dated 21.11.2013 passed by the respondent-Management whereby 24 employees were dismissed from service on account of misconduct. The respondent had filed twenty four separate applications for grant of approval to the aforesaid termination under Section 33(2)(b) of the Act of 1947 and *vide* its order dated 06.05.2023, the Industrial Court granted approval as sought for by the respondent-Management. Feeling aggrieved by the grant of approval, all twenty four employees filed separate petitions bearing Writ Petition Nos.5001-5024 of 2023 before this Court. By judgment and order dated 30.08.2024, all the petitions were dismissed and the employees were granted liberty to approach the Industrial Court in terms of Section 33A of the Act of 1947. In this background, the petitioner-Union filed a complaint invoking Section 33A of the Act of 1947 on behalf of twenty four employees and challenged the approval granted by the Industrial Court for termination of those employees. The respondent appeared before the Industrial Court and filed application at Exhibit C-3 for dismissal of the complaint objecting maintainability of the complaint filed by the Union in the representative capacity. The petitioner-Union resisted the application, however, the Industrial Court allowed the said application at Exhibit C-3 and resultantly dismissed the complaint by the order dated 29.04.2025. This order is impugned in the instant writ petition.

5. Shri S.D. Thakur, learned counsel for the petitioner-Union vehemently submitted that the impugned order is unsustainable in law being passed by ignoring the purport of the provisions of Section 36 of the Act of 1947 and the very spirit behind the existence of a recognized Union. He submitted that the rights of a recognized Union are supported by law and the Union is

authorized to contest the disputes/complaints on behalf of the employees unless there is a prohibition by the individual employee. He submitted that the right of a recognized Union under Section 36(1) of the Act of 1947 is an independent right and it is not conditional in any manner. As regards the proviso to Section 36(1) of the Act of 1947 as introduced by the State of Maharashtra amendment, he submitted that Section 36(1) of the Act of 1947 need to be given an overriding effect over the proviso by protecting the rights of a recognized Union for contesting the disputes on behalf of the employees. By inviting attention to Section 26 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, 'the Act of 1971') and definition of 'a registered Union' as stated in Section 20(2) (b) of the said Act, he submitted that a recognized Union has unfettered right to contest disputes on behalf of the employees. He submitted that in the instant case, all the employees have authorized the Union to file complaint under Section 33A of the Act of 1947 on their behalf by exercising their right under Section 36(1) of the said Act and it is the prerogative of the employees to be represented by the Union. He thus submitted that the proviso to Section 36(1) of the Act of 1947 although created certain restrictions on the rights of the Union but it cannot take away the prerogative of the Union to contest the disputes on behalf of individual employees.

In support of his submissions, he placed reliance on the judgment of the Hon'ble Supreme Court in *Balmer Lawrie Workers' Union, Bombay & Another Versus Balmer Lawrie & Co.Ltd. & Others* [1984 (Supp) SCC 663] and *Paradip Port Trust, Paradip Versus Their Workmen* [(1977) 2 SCC 339] and vehemently submitted that Section 36 of the Act of 1947 confers an absolute

right on the recognized Union and in view of Sections 36(1) and (2) of the Act of 1947, the rights are unconditional and are not subject to conditions laid down under Section 36(4) of the Act of 1947.

6. Per contra, Shri M.G. Bhangde, learned Senior Advocate appearing for the respondent vehemently submitted that the petition is devoid of substance and liable to be dismissed in view of the clear provisions of law, particularly proviso to Section 36(1) of the Act of 1947. He submitted that *vide* judgment and order dated 30.08.2023 passed by this Court in Writ Petition Nos.5001-5024 of 2023, liberty was granted to the employees to approach the Industrial Court in terms of Section 33A of the Act of 1947 and since this was liberty granted to the individual employees, Union cannot claim to get any right to file a complaint on their behalf. By inviting attention to the proviso to Section 36(1) of the Act of 1947, he submitted that the challenge raised in the complaint being related to the dismissal of the employees, the petitioner although a recognized Union does not get any right to contest the complaint. By inviting attention to Section 2A of the Act of 1947 he submitted that the dismissal of a workman is deemed to be an industrial dispute and an individual employee can raise a complaint by invoking said provision. He therefore submitted that the complaint filed by the Union under Section 33A of the Act of 1947 cannot at all be entertained, particularly when the challenge relates to the dismissal of the individual employee and therefore the impugned order needs no interference on any count.

7. Rival contentions now fall for my consideration.

8. There is no dispute that earlier, the employees had filed separate writ petitions which were dismissed by this Court by granting them liberty to approach the Industrial Court under Section 33A of the Act of 1947. These complaints were filed with a specific prayer viz. 'hold that the dismissal Order dated 21.11.2013 issued by the respondent employer dismissing 24 employees listed above in the title clause constitutes contravention of Section 33 of Industrial Disputes Act, 1947....' As such, it is clear that the grievance raised in the complaint is a challenge to the dismissal of the employees by the employer. Although it is stated that the individual employees have given separate letters of authority to the Union to file complaint on their behalf, it has to be noted that earlier the individual employees had filed separate petitions (24 in number) in which the Union was not at all a party. It is pertinent to note that the liberty was granted to the individual employees and no request was made by the employees for being represented by the Union for filing further complaints. As such, it is clear that the liberty granted by this Court to file complaint under Section 33A of the Act of 1947 was in favour of the individual employees and not the Union.

9. It is pertinent to note that Section 36 of the Act of 1947 confers a right on the workman who is a party to the dispute to be represented in any proceedings by any member of the executive or office bearer of a registered trade union of which he is a member. It is crucial to note that in the State of Maharashtra, an amendment is introduced to Section 36(1) of the Act of 1947 by inserting a proviso which reads as under:-

“Provided that, where there is a recognised union for any undertaking under any law for the time being in force, no workman in such undertaking shall be entitled to be represented as aforesaid in any such proceeding (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration) except by such recognised union.”

Pertinent to note, this amendment to add the proviso is in accordance with provisions of Section 20(2)(b) of the Act of 1971.

A perusal of the proviso shows that a distinction is made in between proceedings challenging order of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee and proceedings related to other issues. It is clear that there is a criteria to distinguish in between these proceedings based on issues related to individual rights of an employee or other general rights. In view of the proviso, it is clear that the proceeding about challenge to the dismissal of an employee is required to be contested by the employee himself. The words mentioned in the bracketed portion of the said proviso are significant to point out that the proceeding with respect to dismissal, removal, discharge, etc. are related to the individual rights of the employee concerned and not with respect to the general rights of all the employees, which could otherwise be related to change in condition of services of all the employees or similar such issues which could be agitated through the Union. The proviso therefore clearly shows that the rights of a recognized Union to contest the proceedings on behalf of an employee are restricted in view of State amendment and the purport of this proviso cannot be ignored.

10. As regards the right of a recognized Union to contest the proceedings on behalf of employees as provided under Section 36(1) and (2) of the Act of 1947 is concerned, there is no dispute about the rights of a registered trade Union to contest the disputes on behalf of its members. However, in the wake of specific amendment as provided by the State amendment, the contentions canvassed by the learned counsel for the petitioner cannot be accepted. The position of law as laid down in *Balmer Lawrie Workers' Union, Bombay & Another* (supra) recognizing the rights of a Union to contest proceedings on behalf of its members is not at all disputed. So also, the position highlighted in *Paradip Port Trust, Paradip* (supra) clarifying the absolute right of the workman under Section 36(1) of the Act of 1947 to be represented through a Union being an unconditional right is also not disputed. However, these judgments of the Hon'ble Supreme Court are with respect to provisions of Section 36 of the Act of 1947 and they do not consider the proviso inserted by the State amendment, as mentioned above. As such, in the wake of proviso to Section 36(1) of the Act of 1947, allowing a recognized Union to file a complaint challenging the dismissal of an employee would render the proviso ineffective.

11. It has to be noted that the employee had got an independent right to challenge his dismissal by invoking Section 33A of the Act of 1947 or any other appropriate provision. Even in view of the liberty granted by this Court there is no prohibition on the employee to challenge his dismissal. Even learned Senior Advocate for the respondent during the course of arguments has not disputed the right of an individual employee to file separate complaint case. However, the complaint filed by the recognized Union

seeking to enforce individual rights of the employee is mainly objected to, by the respondent-Management.

12. As regards the contention of the learned counsel for the petitioner that Section 2A of the Act of 1947 will come into play only after actual dismissal of the employee whereas complaint under instant case is under Section 33A of the Act of 1947 and therefore the recognized Union is entitled to file a complaint is concerned, it is crucial to note that the complaint itself raises a challenge to the dismissal and considering the proviso specifically referring to the proceedings of dismissal, the argument of learned counsel for the petitioner is not acceptable. A perusal of the complaint in question shows that it is against the dismissal order dated 21.11.2013 and not purely a complaint challenging change in conditions of service of the employee. Further, in view of the background facts of this case being based on twenty four writ petitions filed by individual employees, the grievance sought to be raised in the complaint under Section 33A of the Act of 1947 is a grievance against dismissal of the individual employee. Thus, the contentions of the counsel for the petitioner in this regard are not appealing.

13. A perusal of the impugned order shows that the Industrial Court has given due consideration to all the relevant aspects involved in the matter and by considering the purport of proviso to Section 36(1) of the Act of 1947, a reasoned order is passed. Needless to state that the individual employees are at liberty to file their complaints under Section 33A of the Act of 1947 by raising their individual grievance.

14. Considering the above mentioned factual and legal aspects, I am of the firm opinion that no indulgence is warranted with the impugned order under Article 227 of the Constitution of India. The writ petition deserves to be dismissed and the same is accordingly dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)

APTE