

Mumbai Mazdoor Sabha

Vs

Bennet Coleman & Co. Ltd. & Others

Civil Appeal No. 4519 of 1985

(V. B. Eradi, R. B. Misra JJ)

06.05.1986

JUDGMENT

R. B. MISRA, J. :-

1. The present appeal by special leave is directed against the judgment and order of the Industrial Court dated February 8, 1985 arising out of an application under Section 11 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act").
2. Section 11 of the Act envisages that any union which has for the whole of the period of six calendar months immediately preceding the calendar month in which it so applies under this section a membership of not less than thirty per cent of the total member of employees employed in any undertaking may apply in the prescribed form to the Industrial Court for being registered as a recognised union of such undertaking. The appellant-union moved an application before the Industrial Court for recognition of its union as a recognised union in respect of the first respondent, Bennet Coleman & Company Ltd. In the said application the appellant impleaded besides respondent No. 1, respondent No. 2, the Times of India and Allied Publications Employees' Union operating in the 1st respondent Company and having some membership amongst the workmen employed therein. The appellant alleged that its membership for the relevant period of six months prior to the date of application stood at the rate of 67 per cent of the total working force. The appellant annexed a list of the workmen who it claimed as its members and a copy of the Constitution of the appellant-union.
3. The Second Respondent on or about the of December 15, 1980, filed certain preliminary objections to the application of the appellant. The principal objection being that the appellant-union had instigated a strike deemed to be illegal under the Act and was therefore debarred from obtaining recognition. This objection was specifically overruled by the Third Respondent, Industrial Court.
4. On March 25, 1981, the second respondent filed its own application under Section 11 for being registered as a recognised union in the said establishment and claimed membership of 46 per cent of the employees. The appellant-union filed its objections to the said application. The second respondent also filed further written objections to the original application filed by the appellant-union. Later on, the second Respondent withdrew its application for recognition and, therefore, we are not concerned with the application of the Second Respondent in the present case and the appeal is confined only to the application filed by the appellant-union.
5. The appellant union filed before the Industrial Court its Subscription Receipt Books, Membership

Register, Bank Pass Book, Ledger and Minute Book to prove that the persons claimed by the appellant as its members are in fact its members. After hearing both the parties, the Industrial Court felt that it would be impossible for it to receive evidence of approximately 1500 workmen and therefore decided to appoint an Investigating Officer under Section 9 of the Act for the purpose of determining the membership of the rival unions and by its order dated September 11, 1981 appointed an Investigation Officer. The order passed by the Industrial Court is as under :

In this matter the application union has produced its documents and the non-applicant union although has not produced any documentary evidence has claimed a substantial membership of their union. In view of the rival contentions, it is necessary that the Investigating Officer holds an inquiry and makes a report as to the correct claim of membership of each union by interrogating individual members in the presence of one representative of each union. Liberty is granted to the non-application union to produce their documents on or before the September 21, 1981. However, if the non-applicant union fails to produce the said documentary evidence, the Investigating Officer may proceed with the inquiry as directed above and submit his report by the end of this month."

6. Pursuant to the said order dated September 11, 1981, the Investigating Officer called a meeting of the representatives of the appellant and the First and Second Respondents on October 16, 1981 to discuss and decide all the issues relating to the aforesaid investigation as also the nature of questions which should be asked to the workmen who would be appearing before the Investigating Officer. It appears that in the aforesaid meeting an unanimous decision was taken by all the parties including the representatives of the second respondent union wherein it expressly agreed that only one question will be put to all workmen. i. e. "In the year 1980 you were a member of which union? " It was further agreed between the parties that in case the workmen did not know the name of the union, they would be asked the name of the union, they would be asked the name of the union leader or of the Committee Member of the Union to which they belong. It was so agreed because all the parties realised that very often the workmen do not know the precise name of the union to which they belong and only associate themselves with the name of the President of the union or the office-bearers thereof. The said agreement between the parties was reduced to writing by the Investigating Officer by his order dated October 16, 1981. The agreement also indicated that the inquiry will be conducted in Marathi and also if required, either in Hindi or in English, as the case may be.

7. The Investigating Officer issued a letter to the First Respondent Company dated October 30, 1981 calling upon it to publish a notice on its notice-board informing the workmen of the aforesaid investigation proceedings, together with the list of the workmen to be interrogated on behalf of both the unions. The investigation, however, could not start on account of some dilatory tactics adopted by the second respondent union. The Investigating Officer, therefore, moved the Industrial Court on January 25, 1982 for further directions and the Industrial Court gave the necessary directions in the following terms :

Heard both Shri Deo and Shri Bandekar. The Investigating Officer to continue his investigation. After giving usual notice to all the parties concerned, he should proceed with the work, whether any of the parties appeared or not after due service.

8. Pursuant to the aforesaid order, the Investigating Officer issued notice dated February 3, 1982 to the appellant-union and the second respondent intimating that he intend to start the investigation of membership on and from February 8, 1982. Both the unions were, therefore requested to remain

present during the course of the said investigation.

9. Although the second respondent had taken a number of pleas both in its preliminary and subsequent written objections, it did not raise any such objection before the Investigating Officer and rest content by putting one question to all the workmen as agreed upon between the parties before the Investigating Officer. The respondent union either gave up other objections or waived the same.

10. Out of 1478 members claimed by the appellant-union, 1311 members appeared before the Investigating Officer and 1309 submitted their statements admitting membership of the appellant union. On the other hand, out of 1002 members claimed by the respondent-union only 188 appeared before the Investigating Officer. Out of 188 workmen, only 12 stated that they were members of the respondent-union in 1980. Even out of those 12 members, two workmen subsequently approached the Investigating Officer and submitted in writing their revised statements stating that they had made their statements that they were members of the respondent-union on account of some misunderstanding and they, therefore, desired to change their statements. Further, out of the remaining 176 members claimed by the respondent-union, 172 stepped forward to say that they considered themselves as the members of the appellant-union during the year 1980. The appellant-union, however, disowned those persons inasmuch as they had not specifically joined the appellant-union like members specifically referred in its application for recognition. In this situation, it can be safely inferred that 172 workmen though not members of the appellant-union, had leaning and sympathy towards that union rather than with the respondent-union. The Investigating Officer accepted the claim of the appellant-union and submitted his report to the Industrial Court on March 12, 1982.

11. In the normal course, the Industrial Court in the absence of any other objection raised by the respondent-union before the Investigating Officer should have accepted the conclusions arrived at by the Investigating Officer. The Industrial Court, however, permitted the respondent-union to raise objections despite the fact that the respondent-union had given up or waived other objections before the Investigating Officer.

12. The appellant did not produce material evidence before the Investigating Officer to meet the objections taken in the written objections as they were given up before the Investigating Officer. The appellant in this situation sought the permission of the Industrial Court to adduce evidence to meet the objections sought to be raised before the Industrial Court. The Court however refused the permission. The appellant, therefore, had no option but to rely only on the material already on the record.

13. The respondent-union raised a number of objections some based on the written objections and some objections were taken afresh before the Industrial Court. The Industrial Court overruled most of the objections but accepted three objection raised by the respondent-union. In the result, the Industrial Court dismissed the application of the respondent-union for recognition. The three objections which weighed with the Industrial Court are : (1) that the Constitution of the appellant-union is at variance with the requirement of clause (i) of Section 19 inasmuch as the requirement of Section 19(1) is that the rules of the union must provide that the membership subscription shall not be less than fifty paise per month. But the Constitution and the rules of the appellant union does not satisfy this requirement of Section 19; (2) that a fairly large number of workers alleged to be members of the appellant union were in arrears of the subscription for a period of more than three calendar months during the period of six months immediately preceding such time; and (3) that

some of the new members included as the workers of the appellant union had not paid their admission fees.

14. The appellant has now come by special leave to this Court to challenge the order of the Industrial Court.

15. Before dealing with the questions raised in this appeal, it would be appropriate at this stage to refer to the relevant provisions of the Act. Section 19 of the act obligates that the rules or the Constitution of a union seeking recognition under this Act shall provide for the following matters and the provisions thereof shall be duly observed by the union, namely :

- (i) the membership subscription shall be not less than fifty paise per month;
- (ii) the Executive Committee shall meet at intervals of not more than three months;
- (iii) all resolutions passed, whether by the Executive Committee or the General Body of the union, shall be recorded in a Minute Book kept for the purpose; and
- (iv) an Auditor appointed by the State Government may audit its account at least once in each financial year.

16. According to Section 19 of the Act, the rules of a union seeking recognition under this Act shall provide for, inter alia, that the membership subscription shall not be less than fifty paise per month. One of the questions for consideration is whether there has been the compliance of clause (i) of Section 19 of the Act. The relevant rule in the Constitution of the appellant-union is Rule 3. Insofar as it is relevant for the purpose of this case, it reads :

Any worker aged more than 18 years, employed in any unit of industries as mentioned in Schedule 'A'... shall be entitled to become an ordinary member of the Sabha on payment of an admission fee of Rupee one and annual subscription of Rs. 24/- at one time or at the rate of Rs. 12/- for six months... The President may exempt any worker or workers from payment of admission fee of Rupee one at any time. In case any member joins or forms a rival union or joins hands with employer in any manner his membership whether ordinary or life in the Sabha, stands automatically terminated. Membership fee paid shall not be refunded to the Member."

17. The only requirement of clause (i) of Section 19 is that the rule or the constitution of the union must provide that the membership subscription shall not be less than fifty paise per month. The Constitution of the union provides that a sum of Rs. 24/- for twelve months or Rs. 12/- for six months will be the subscription of a member. This works out to Rs. 2/- per month which is obviously more than fifty paise per month. The Industrial Court, however, took the view that the appellant ought to have led evidence to show that its members understood the Constitution to mean that payment of subscription was at the rate of Rs. 2/- per month. The reasoning given by the Industrial Court, in our opinion, is not at all tenable. Rule 3 of the Constitution of the union undoubtedly provides for subscription of Rs. 2/- per month which is in excess of fifty paise as contemplated by clause (i) of Section 19. Thus, in our opinion, Rule 3 substantially satisfies the requirement of clause (i) of Section 19.

18. This leads us to the second ground which prevailed with the Industrial Court, namely, whether the workers alleged to be the members of the appellant-union were in arrears for a period for more

than three calendar months during the period of six months immediately preceding such time. The Industrial Court relied on the definition of member as given clause (11) of Section 3 of the Act, which reads thus :

3(11) "Member" means a person who is an ordinary member of a union, and has paid a subscription to the union of not less than fifty paise per calendar month :

Provided that, no person shall at any time be deemed to be a member, if his subscription is in arrears for a period of more than three calendar months during the period of six months immediately preceding such time, and the expression "membership" shall be construed, accordingly.

Explanation. - A subscription for a particular calendar month shall, for the purpose of this clause, be deemed to be in arrears, if such subscription is not paid within three months after the end of the calendar month in respect of which it is due;

19. As a matter of fact, Section 19 does not talk of payment of subscription but talks of only four requirements as enumerated in Section 19. The Industrial Court, however, was of the view that the appellant-union had to establish that the workmen claimed to be its members had paid the subscription as required by Section 3(11) of the Act and it is on this basis that the Industrial Court imported Section 3(11) while considering the requirements of Section 19. It is on the strength of the explanation added to clause (11) of Section 3 that the Industrial Court held that subscription should have been paid month by month.

20. Reading Section 3(11) as a whole, it is evident that while defining member it permits the time for payment of subscription to be extended for a period of three months beyond the month in respect of which it becomes due. Therefore, the lump sum payment of three months will, in our opinion, satisfy the requirement of Section 3(11) and the Industrial Court has taken a hypertechnical view of Section 3(11) of the Act.

21. The real crux of the problem is whether the appellant-union seeking recognition under this Act provides for the matters enumerated in the various clauses of Section 19.

22. The court has to adopt a common sense construction and in any case where two constructions are possible, the one which is more rational should be accepted. Since the Constitution of the appellant-union provides for a annual subscription of Rs. 24/- at one time or Rs. 12/- for every six months, the said amounts are paid in relation to specific months and are meant to cover such of these months.

23. There is yet another aspect which cannot be lost sight of. In the first written objection which was by way of preliminary one, the plea taken was that the appellant-union had not paid the subscription at all but in the second written objection, the respondent had modified its earlier stand and took up the stand that there was some discrepancy between the amount collected under the head subscription and the number of persons in respect of whom it was so collected. The disparity, if any, was only in respect of members at serial numbers 2, 3 and 4 of the list and that too, only of a marginal amount having no real impact on the overall question of payment of subscription.

24. Besides, both the parties having entered into an agreement to put only one question to each worker, as indicated earlier, the other objection had been either given up or waived and respondent 2 would be estopped from raising those objections before the Industrial Court.

25. Indeed, the Industrial Court itself refused to accept the respondents' challenge to the identity of the workmen on the ground that the union respondent had not raised this point before the Investigating Officer. The Industrial Court also refused to accept the allegation of the respondent-union that the appellant had induced workmen to give a favourable reply on the ground that same had not been raised before the Investigating Officer. We see no reason why it did not apply the same principle with regard to the other objections which prevailed with it. The Industrial Court did not choose to rely on the documents produced by the appellant-union regarding the payment of subscription on the ground that there is nothing to show that the amount shown therein had not been paid by the appellant-union itself. The Industrial Court, in our opinion, has carved out a new case which was not even pleaded in any of the two written objections filed by the respondent-union.

26. This leads us to the last ground about the non-payment of the admission fee. No specific plea to that effect had been taken in either of the two written objections. The objection taken is that the admission fee net amount in the cash book of the appellant was not shown. The Industrial Court concluded about the non-payment of the admission fee on the ground that the counterfoils of the receipts showing collection of admission fee had not been shown. The requirement of Section 3(11) of the Act is only about the payment of subscription and not about the admission fee. If there is evidence to show that subscription has been received from the workmen it pre-supposes that they were the valid members as no subscription will be taken from a workmen who is not a member of the union and that also leads to the conclusion that the workmen were the valid members of the union according to the rules of the union.

27. Even assuming that admission fee of certain workmen had not been paid, there is a provision in the Constitution itself for exempting any worker or workers from payment of admission fee Re 1 at any time as is evident from Rule 3 of the Constitution which has been quoted in the earlier part of the judgment.

28. Thus, even if admission fee had not been paid it cannot affect the membership of the workmen in face of the provisions of exempting the workmen from the payment of membership fee.

29. The Industrial Court, in our opinion, has committed a manifest error in assuming that there was no provision in the Constitution for exempting the admission fee. The Industrial Court has overlooked the provisions of Rule 3 of the Constitution of the union.

30. For the foregoing discussion, we find considerable force in the contention raised on behalf of the appellant and the appeal must succeed. We accordingly allow the appeal and set aside the order of the Industrial Court with the result that the application for recognition filed by the appellant-union stands allowed. There will be no order as to costs.

</html