Association of Engineering Workers

Vs

Dockyard Labour Union and Others

SLP (C) No. 4794 of 1992

(A. M. Ahmadi, M. M. Punchhi, K. Ramaswamy JJ)

23.07.1992

ORDER

1. Mr Hegde, the learned counsel for the petitioner, attempted to assail the judgment of the Division Bench of the Bombay High Court on two grounds, namely, (1) that it is based on a decision of this Court wherein the view taken by this Court on the interpretation of Sections 10 to 13 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as 'the Act') is not correct and requires reconsideration by this Bench, and (2) that notwithstanding the view taken in the said decision, the cancellation of recognition is not correct as there was in fact no mistake at all, in that, procedure of ballot was adopted after ensuring that the workmen, who voted at the ballot had put in service of not less than six months. We do not see any merit in either of these two contentions.

2. Section 11 of the Act provides for making an application for recognition of a union. If say 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 number of employees employed in any undertaking, may apply in the prescribed form to the Industrial Court for being registered as a recognised union for such undertaking. The plain language of this section makes it crystal clear that the requirement for recognition is that the union should have for a period of six months immediately preceding the making of an application, a membership of not less than thirty per cent of the total number of employees employed in the said undertaking. Section 12 next provides that on receipt of an application from a union for recognition under Section 11, the Industrial Court shall, if it finds the application on a preliminary scrutiny to be in order, 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 the other union or unions, if any, having membership of employees in that undertaking to show cause, within a prescribed time, as to why recognition should not be granted to the applicant-union. If, after considering the objections, if any, that may be received and if after holding such enquiry in the matter as it deems fit, the Industrial Court comes to the conclusion that the conditions requisite for registration specified in Section 11 are satisfied, the Industrial Court has to grant recognition to the union and issue a certificate in that behalf in the prescribed form. Section 13 next provides that for cancellation of recognition and says that the Industrial Court shall cancel recognition of a union if after giving notice to such union to show cause why its recognition should not be cancelled, and after holding an inquiry, it is satisfied that it was recognised under mistake, misrepresentation or fraud. In the present case, the petitioner-union had made an application or recognition under Section 11. Instead of verifying the fact whether the conditions for recognition are satisfied in the manner set out in sub-section (2) of Section 12, the Industrial Court resorted to ballot, albeit at the instance of the parties and by their consent. This Court in Automobile Products of India Employees' Union v.

Association of Engineering Workers, Bombay [(1990) 2 SCC 444 : 1990 SCC (L&S) 293] after considering the scheme of the relevant provisions of the Act relating to recognition observed that even if secret ballot method is resorted to with the consent of parties, such consent cannot cure the illegality of substitution of a procedure not prescribed by the Act. In other words, this Court came to the conclusion that secret ballot was a procedure not recognised by law, it was in fact alien to the Act and, therefore, that method or mode could not be accepted as valid for the purposes of recognition. We see no reason to depart from the view taken in the aforesaid decision nor are we satisfied that in the instant case the method resorted to by the Industrial Court was one consistent with the provisions of the statute. Even if the method of secret ballot is resorted to with the consent of parties and care has been taken to see that only those employees who had put in more than six months of service were allowed to case their preference for the purpose of determining allegiance that was not a proper method for verification of the condition required for recognition under Section 11 and hence it was a method which was clearly alien to the statute. We, therefore, do not see any reason to depart from the view taken by the Division Bench of the Bombay High Court based on the decision of this Court in Automobile Products case [(1990) 2 SCC 444 : 1990 SCC (L&S) 293]. We, therefore, see no merit in this petition and hence the same is dismissed. The interim stay granted earlier will stand vacated.

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