SUPREME COURT OF INDIA

Poona Employees Union

Vs.

Force Motors Limited & Ors.

C.A.No.10130-10131 of 2010

(Amitava Roy and V.Gopala Gowda, JJ.)

01.12.2015

JUDGMENT

Amitava Roy.J.

1. Two employees unions of the industrial establishment, Force Motors Limited (hereinafter to be referred to as "the company") are locked in a legal tussle, the appellant for acquiring the status of a recognized union under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, hereinafter to be referred to as "the Act") and the respondent No. 2 to ward off such an endeavour, it being the recognized union. The pursuit for recognition that had commenced in the year 2003, on an application filed by the appellant before the Industrial Court under Section 11 of the Act, has witnessed a prolonged adjudication, however, leaving the issue unresolved. Though the appellant union tasted success before the Industrial Court, the fortune reversed before the High Court thus, catapulting it before this Court for its pancean intervention. In challenge, is the judgment and order dated 2.2.2009 rendered by the High Court of judicature at Bombay in Writ Petition (C) No. 2907 of 2006 jointly with W.P. (C) No. 2878 of 2006, lodged by the company and the defender union independently assailing the determination of the Industrial Court.

2.We have heard Mr. Colin Gonsalves, learned senior counsel for the appellant and Mr. Shyam Divan and Mr. C.U. Singh, learned senior counsel for the respondent Nos. 1 and 2 respectively.

3.The factual backdrop has to be summarily outlined to better comprehend the issue and the rival assertions. The company, Force Motors Limited, earlier named as Bajaj Tempo Limited, has its office at Akurdi, Pune. The respondent No. 2- union i.e. Bhartiya Kamgar Sena (for short, hereinafter to be referred to as "the BKS") is the recognized union of the company. The appellant union in its bid to be adjudged as the recognized union in place of BKS, filed an application on 6.9.2003 before the Industrial Court, Pune, as required under the provision of the Act. It insisted that almost all the employees members of BKS had meanwhile tendered their resignation, and had expressed their desire to discontinue their membership therewith. It

claimed that majority of the employees had become its members, so much so that in the month of January, 2003, it had in its fold 1973 employees members. Claiming that it was a union registered under the Trade Unions Act, 1926 (for short, hereinafter to be referred to as "1926 Act") on 20.7.1986 with a valid certificate to that effect, it asserted that with the exodus of the employees members from BKS to its ranks, it had the holding of 85% of the total employees of the company. It disclosed, inter alia, as well the names and particulars of the office bearers and members of the Executive Committee as in the month of January, 2003 and mentioned as well that its membership subscription was Rs. 2 per month and that the meetings of the Executive Committee were being held at regular intervals of not more than 3 months. It maintained as well that the resolutions passed by the Executive Committee and the General Body thereof were recorded in the Minute Book and that its accounts were being duly audited by a Chartered Accountant for every financial year and that certificate(s) to that effect was/were issued as well. Contending that it, in any case, had in its roll more than 30% membership of the employees of the company, this along with the other factors entitled it to be adjudged as the recognized union thereof under the Act. That it complied with the prescription of the statute more particularly as laid down in Sections 11 and 19 of the Act, was emphasized.

4. The company resisted the application by pleading, amongst others, that the appellant union was not duly registered under the 1926 Act. It denied as well that it did have, at that point of time, 30% membership of the employees of the company and that it did comply with the imperatives of Section 19 of the Act. Dismissing the appellant union's claim of majority membership to be a bogey, it refuted its claim of having larger membership of the employees of the company compared to BKS. The company alleged that the appellant union had failed to maintain the records as per Section 22 of the 1926 Act and that it was, thus not eligible to be conferred the status of recognized union of the company.

5. BKS, as well, joined the fray in similar lines with the company. Apart from reiterating that the appellant union was not duly registered under the 1926 Act and thus it had no locus standi to claim the status of a recognized union, it categorically controverted its clam of holding 30% membership of the company as compared to it (BKS). It denied that the appellant union had complied with the mandatory provisions of Section 19 of the Act pertaining to minimum subscription of membership, meetings of the Executive Committee at regular intervals, record of resolutions in Minute Book and audit of its accounts. It alleged that the appellant union had produced false and fabricated records in respect of membership as well as the meetings of its Executive Committee. BKS claimed that it had been working efficiently and effectively as the recognized union of the company over the years and had zealously guarded the interest of the workers by entering into settlements with the company from time to time to effectuate the same. It alleged further that the office bearers of the appellant union were outsiders and that it (appellant upon) had not been working in the interest of the employees of the company.

6. In the proceedings registered as Application (MRTU) No. 3 of 2003 before the Industrial Court at Pune, following issues were framed founded on the rival pleadings:

"1) Whether the Applicant Union proves that it has membership of not less than 30% of the total number of the employees, employed in the undertaking for the whole of the period of six months, immediately preceding the calendar month, in which it so applies"?

2) Whether the membership of Applicant Union was larger than that of the membership of the Non-Applicant No. 2 (Recognized Union), during the whole of the period of six months, prior to the filing of the petition?

3) Whether the Applicant Union has made compliance of Section 19 of MRTU & PULP Act, 1971?

4) Whether the Applicant Union is entitled for the certificate of registration as a recognized union in place of Non-Applicant No. 2 Union as per Section 14 (3) of MRTU & PULP Act, 1971?

5) What order? "

7. At the outset, the Industrial Court recorded that the application of the appellant union was in keeping with the requirement that there should be a time lag of two years since the date of registration of the recognized union and an interregnum of one year since the date of disposal of the previous application for recognition, if any.

8. The Industrial Court in the course of adjudication entrusted an exercise to the Investigating Officer contemplated by the Act to verify the membership of both the unions and to submit a report before it. This was patently in order to satisfy itself of the compliance of the prescriptions of Sections 11 and 12 of the Act, by the appellant union seeking the status of recognized union. As the decision eventually rendered by the Industrial Court on 22.3.2006 would reveal, both the unions were afforded sufficient opportunity by the Investigating Officer to adduce evidence on the rival claims of membership. The report of the Investigating Officer dated 26.10.2004, as is available on record, was taken note by the Industrial Court in details.

9. It took into account the findings recorded in the report that there were 26 and 217 exclusive members of the appellant union and BKS respectively and 1908 common members of both the unions. This was in the face of the total strength of the employees of the company ranging from 2109 to 2155 during the relevant period i.e. March 2003 to August, 2003. That vis-a-vis, this strength, whereas the appellant union had claimed its hold over 1973, BKS asserted that it had 2166 employees as its members. As a plea was raised before the Industrial Court that the aspect of overlapping membership ought to be excluded and that exclusive membership of the unions ought to be determined as a correct index of the membership strength of the competing unions, it undertook an analysis, inter alia, of the oral evidence

adduced before it as would be adverted to hereafter. The appellant union had examined witnesses including its President - Madhav and a member-Gugario to prove the issue of majority membership of the employees of the company. The company and the BKS produced witnesses as well in support of their resistance. For BKS, office bearers including its General Secretary, President of Pune Unit, Executive Member of Pune Unit, Secretary and Vice-President of BKS were examined.

10. In the process of evaluation of the oral evidence adduced, it transpired that the membership fee of BKS was being deducted from the bonus amount payable to the workers every year. That the act of the company in deducting the membership fee from the bonus amount was the subject matter of assailment in the Industrial Court in a separate proceeding was noted. The Industrial Court recorded that for the last five to six years prior to the adjudication, the company was collecting Rs. 100 per worker per annum from the bonus amount and adjusting the same against the membership fee of BKS. It also noted that such deduction was at the instance of BKS, requesting the company to do so from the bonus payable to the workers every year. It was also recorded that there was no practice to pay membership fee in cash by the employees of the company to BKS for this period. The endeavour on the part of the witnesses of the BKS in the capacity of office bearers to testify that it used to collect membership fee in cash from the workers was not accepted as the same was opposed to the contemporaneous records. To fortify this conclusion, the Industrial Court also referred to the documentary evidence as available demonstrating that more than 1500 workers of the company along with appellant union had raised this issue in the year 2002 and had impeached the deduction of membership fee of BKS from the bonus amount by filing complaints in the year 2003 before the same forum. That there was no individual consent letter of the workers authorizing the company or the BKS to effect deduction used for adjustment against membership fee was noted as well. The Industrial Court returned a finding that such deduction did not amount to voluntary subscription of membership fee from the workers' accounts and in fact was an exaction against their consent and will since the year 2002. The oral evidence adduced on behalf of BKS about acceptance of membership fee in cash for the year 2003 was, thus discarded as untrustworthy.

11. In arriving at this conclusion, the Industrial Court, inter alia, referred to the findings of the Investigating Officer pertaining to the anomalies noticed in the cash book of BKS maintained for the relevant period. To discard the entries made therein, as proof of collection of membership fee, the observation of the Investigating Officer that the cash book was not only not in the prescribed proforma but also not signed by any of the office bearers of BKS, was noted. The oral evidence of the witnesses produced by BKS relating to the transactions with the bank involving membership fee was not accepted, being not duly corroborated by the documentary evidence on record, besides being inherently untrustworthy. The Industrial Court, in particular, recorded its reservation on the inconsistency between the two versions, namely, deduction from the bonus amount by the company till the year 2003 against membership fee and the claim of the BKS of collection of such fees by cash which were mutually mutilative. Taking cognizance of the proceedings separately instituted in a representative capacity on behalf of the members of the appellant union and other employees

of the Company, objecting to the deduction from bonus amount, for the membership fee of BKS, its (BKS) claim of majority membership was rejected.

12. In contradistinction, the Industrial Court noted that the Investigating Officer had not detected any irregularity or mistake with regard to the collection of membership fee for the relevant period of six months and that the entries in cash book of the appellant union were correct and were in conformity with the receipt books maintained therefor. The finding of the Investigating Officer that the amount of membership fee collected, however, was not deposited in the bank, was also marked. This omission on the part of the appellant union, according to the Industrial Court, was not a cardinal lapse, as it was making its endeavour to acquire the status of a recognized union. The Industrial Court recorded as well that the appellant union, as per the report of the Investigating Officer, could collect membership fee from 1973 employees which amply demonstrated their spontaneous support for it. It was deduced that the objections raised by 1500 employees of the company against its action of effecting deductions from the bonus amount towards the membership fee of BKS also evinced that there was no voluntary payment thereof, belying thus its (BKS) claim of having a hold on majority of the employees members of the company.

13. In course of the adjudication before the Industrial Court, an application was filed by the appellant union to produce affidavits of its members numbering 1556 to consolidate its decision of majority membership. The Industrial Court in the proceedings dated 29.11.2004 under Section 11 of the Act overruled the objection of the respondents that such proof of affidavits was inadmissible and allowed the prayer with the condition that the same would not be used for proving the point of membership of the appellant union and would be used for other relevant and ancillary purposes. In granting this permission, the Industrial Court took note of the submission made on behalf of the appellant union that these affidavits would not be used or proving the issue of membership but for other relevant and ancillary purposes. The non-applicants/respondents were also granted the liberty to file counter-affidavits of rebuttal, if so advised. BKS, though did challenge this order before the High Court, the petition was dismissed on 9.8.2005. Eventually, BKS, also filed affidavits of 170 employees.

14. The Industrial Court took note of the contents of 1556 affidavits filed on behalf of the appellant union to deduce that the affiants had resigned from the membership of BKS in the year 2002 and had not paid the membership fee since December, 2002. It was held by the Industrial Court that these affidavits did substantiate that these 1556 employees did bring an end to their relationship with the BKS and had not paid the membership fees to it after December, 2002. That the contents of these affidavits did clearly indicate that the concerned employees had severed their ties with the BKS and had come over to the appellant union was concluded. On a scrutiny of the cross-examination of the 100 affiants, as was permitted, the Industrial Court held that there was no circumstance or ground to disbelieve the deponents on their plea that they had disconnected their membership with the BKS and had stopped paying membership fees to it after December, 2002. The intention of the affiants numbering 1556 to support the appellant union, according to the Industrial Court, was conspicuously established.

It referred to as well the 170 affidavits filed by BKS only to return a finding that if its claim of common membership of 1908 employees was credible, it ought to have been in a position to produce more affidavits. The Industrial Court thus inferred that this fact also authenticated that only a small segment of the employees of the company was in support of BKS. The claim of common membership of 1908 employees advanced by BKS was thus rejected. The Industrial Court, thus eventually in deciding the issue of membership, held thus:

> "So, after comparing the entire evidence adduced by both unions on the point of strength of their membership read together with report of Investigating Officer as well 1556 affidavits of the employees filed on record by Applicant Union, I am of the (Opinion that the Applicant Union was having more than 30 % of membership of the total employees of the Company as well as larger membership than the membership of B.K.S. during the period of six months from the month of March 2003 till August 2003. In such circumstances, mandatory requirements as given under Section 11 and Section 14 of MRTU & PULP Act, 1971, are substantially complied by the Applicant Union, and Applicant Union has succeeded in establishing membership of not less than 30 % of total employees as well as larger membership of the total employees of the company with it during the period of six months prior to filing of the present petition. So, I answer No. 1 and 2 in affirmative."

15. As would be evident from the above extract, the Industrial Court did take note of the contents of 1556 affidavits of the employees and acted thereon to conclude that the appellant union did hold at that point of time more than 30% membership of the total employees of the company during the relevant time i.e. March, 2003 to August, 2003 and that it had otherwise satisfied as well, the mandatory requirements of Sections 11 and 14 of the Act.

16. Referring to Section 19 of the Act, the Industrial Court next adverted to the constitution of the appellant union placed on record and the evidence of its President to the effect that the membership fee of Rs. 2 per month from each member was being collected and that the Minute Book of the meetings of the Executive Committee as well as the audit of its accounts was being done regularly and further that the necessary records namely, receipt book, register of members, cash book etc. were also being maintained. It held that the prescriptions of Section 19 of the Act had also been complied with. It, however, recorded that any irregularity in the observance of the enjoinment of Section 19 of the Act, per se would not debar a union from claiming the status of recognized union as those, were to be necessarily complied with after the said status was conferred. The allegation leveled against the appellant union that it had instigated, aided or assisted illegal strikes during the relevant period, was also dismissed in absence of corroboration thereof by any evidence. The imputation that the appellant union's request for being acknowledged as the recognized union, lacked bonafide, was rejected as well. In all, the Industrial Court, thus returned a finding that having regard to the materials on record, the appellant union was entitled to be adjudged eligible to be conferred the status of recognized union and did issue a direction to that effect. It was directed that the appellant union be registered as recognized union in place of BKS for the company and also

saddled BKS with costs of Rs. 25000/¬for resisting the process without the support of the majority employees' of the company.

17. The High Court, as the impugned judgment would disclose, took note of the order dated 29.09.2004 of the Industrial Court by which the objection of BKS to the prayer of the appellant union to file affidavits was rejected with the observation that the same would not be taken into consideration for the purpose of verification of the membership. It also took cognizance of the fact that as per the report of the investigating officer dated 26.10.2004, the appellant union had exclusive membership of 26, and BKS of 270 and that 1908 employees were common to both the unions. It also marked the finding of the Investigating Officer that the appellant union had never deposited any amount in its bank account. Taking note of the order dated 29.9.2004 whereby the Industrial Court had permitted cross-examination of 99 affiants out of 1556 affidavits, the High Court did record that 17 of them had admitted that they still continue to be the members of the BKS and that 7 had admitted in their cross¬examination that they had filed the affidavits only on the assurance of the appellant union that they would be reimbursed the wages deducted on account of go-slow initiatives resorted to by them. The fact that the prayer of the BKS to cross-examine all the 1556 affiants was rejected by the Industrial Court, was minuted.

18. Vis-a-vis the first limb of impugnment registered by the respondents, namely, the applicant union had no right to represent the employees, the High Court referred to its constitution and more particularly its object of organizing and uniting the employees, and recorded that though the same was represented to be included in the schedule thereto, the same was not discernable therefrom and thus the purpose for which the applicant union had been established was not forthcoming for which it was not eligible to be recognized under Section 11 of the Act.

19. On the aspect of the reception of 1556 affidavits, the High Court was of the view that the liberty to cross¬examination only 99 affiants, when the contents of the affidavits were the same, was unfair as these documents were relied upon to draw conclusions about the factum of membership of the unions. It referred to the report of the Investigating Officer in details pertaining to the facet of membership and held that the approach of the Industrial Court in dealing with this issue by overlooking the fact that it was the onus of the appellant union to prove that the BKS had lost its representative character and that it was eligible to be recognized under Section 11 of the Act, was defective. It was of the considered view, that the Industrial Court in fact had relied upon the affidavits as a proof of membership of the applicant union by marking a departure from its order that the same would not be used for such purpose. The High Court thus concluded that the affidavits filed by 1556 employees did play a decisive role to enable the Industrial Court to reach the conclusion that the applicant union commanded majority of membership of the undertaking which was unsustainable in law.

20. The High Court also took note of the findings recorded in the report of the Investigating Officer about the exclusive and dual membership claimed by both the unions as per the

records as well as the observations on the documents produced by them. Referring to the decision of this court in *Automobile Products of India Employees' Union Vs. Association of Engineering Workers, Bombay and Others*[1] , the High Court returned the finding that the decision of the Industrial Court holding the appellant union to be eligible under the Act to be conferred the status as the recognized union was flawed and untenable and thus interfered with the same.

21. Mr. Gonsalves has emphatically argued that as the appellant union had on the basis of the materials on record demonstrated that it had fully complied with the enjoinment of Sections 11, 14 and 19 of the Act, the High Court ought not to have reversed the finding of the Industrial Court that it (appellant union) was entitled to be conferred the distinction of recognized union under the statute. The Industrial Court having, on an elaborate analysis of the evidence adduced as required by law having held that the appellant union was adequately suitable to be adjudged, the recognized union in place of BKS, the High Court had fallen in error in recording a conclusion contrary thereto, he urged. The learned senior counsel insisted, that it being apparent on the face of the materials laid before the Industrial Court that during the relevant period, BKS had been reduced to a minority with regard to its membership holding and that in the interest of collective bargaining, the appellant union ought to be handed over the reins thereof, the impugned judgment needs to be interfered with on the touchstone of welfare of the industrial community as well. Mr. Gonsalves maintained that the appellant union had been able to establish its eligibility as well as suitability for being adjudged as the recognized union of the company as a replacement of BKS on the basis of the report of the Investigating Officer as well as the other evidence adduced sans the affidavits on record and thus the High Court had erred in returning a finding that the Industrial Court had impermissibly taken note of and relied upon the affidavits for a decisive finding in its favour. He urged that the affidavits filed on behalf of the appellant union having been referred to by the Industrial Court principally to take cognizance of the deduction by the company, from the yearly bonus, for adjustment against the membership fee of BKS, the High Court went wrong in deducing that the same had been relied upon to decide the issue of membership. In any view of the matter, Mr. Gonsalves argued that not only the 1556 affidavits filed on behalf of the appellant union did evince a mass migration of the members of BKS to the appellant union, as the respondents had been accorded and had availed the opportunity of cross-examining 100 affiants, the process by no means was repugnant to the one as envisaged by Section 14 of the Act and is thus beyond reproach. Though admitting, that reception of affidavits on the aspects of enquiry contemplated by the Act qua the issue of conferment of the status of recognized union is not obligatory, the course adopted by the Industrial Court in that regard in the case in hand, thereby ipso facto did not vitiate the exercise, he pleaded. Apart from referring to the report of the Investigating Officer and the other evidence on record as well as the concluded determination of impermissible deduction from the annual bonus of the employees by the company for payment of membership of BKS, the learned senior counsel insisted that the impugned judgment and order ought to be interfered with to secure industrial peace, amity and stability. The learned senior counsel took pains as well, to take us through the oral evidence of the witnesses of the appellant union to

authenticate its claim of compliance of the pre-conditions embodied in Sections 11, 14 and 19 of the Act. Mr. Gonsalves distinguished the decision of this Court in Automobile Products of India Employees' Union (supra) in its application to the facts of the case. He cited the decision in *Balmer Lawrie Workers' Union, Bombay and Anr. Vs. Balmer Lawrie & Co. Ltd. and Ors*[2]*., and R.G. D'SOUZA Vs. Poona Employees Union and Another*[3]*,* to buttress his contentions.

22. In controversion, the learned senior counsel for the respondents have asserted that having regard to the scheme of the Act and the provisions pertaining to the enquiry for verification of membership for conferment of status of a recognized union, the Industrial Court ought to have limited the adjudication of the issue on a consideration of the report of the Investigating Officer and the evidence adduced by the parties only and its reliance on the affidavits did vitiate the process undertaken by it, as rightly held by the High Court. Placing emphatic reliance on the decision of this Court in Automobile Products of India Employees' Union (supra), they have urged that on this count alone the present challenge ought to be negated.

23. Without prejudiced to this, they have argued that on a cumulative evaluation of the findings recorded in the report of the Investigating Officer and the other evidence on record, it being apparent that the appellant union had failed to satisfy the statutorily prescribed pre-requisites to entitle a union to be acknowledged as a recognized union under the Act, no interference in the impugned judgment and order is warranted.

24. They contended that, even assuming that the finding of the Investigating Officer of dual membership of 1908 employees was acceptable, even then in total, the appellant union could be credited with only 1937 members compared to 2125 of BKS. On a comparative assessment of the evidence adduced by the rival unions, the Industrial Court could not have allowed the application of the appellant union to accept it as a recognized union as a substitute of BKS, they emphatically urged. According to them, not only the report of the Investigating Officer, but also the testimony of the witnesses of the appellant union did conspicuously demonstrate that the essential records as prescribed by the Act had not been maintained by it, thus belying its claim of a deserving union to be conferred the status, it had applied for.

25. Attention of this Court, in particular was drawn to the finding of the Investigating Officer that the amount collected as membership fees during the relevant period had not been deposited by the appellant union in its bank account and also that its accounts were not audited by an auditor appointed by the State Government as required under Section 19 of the Act. The learned senior counsel were critical as well of the omission on the part of the Industrial Court to take note of the version of the affiants of 100 affidavits cross-examined which totally demolished the appellant union's claim of the majority membership. The following decision was referred to for reinforcement: Aya.aubkh.an *Noorkhan Pathan Vs. State of Maharashtra and Ors*[4]*,*

26. A few intervening events of significance demand attention at this stage. On 10.10.2003, one Shri Rosaria D'Souza, claiming himself to a permanent employee of the company had filed a representative complaint on behalf of the members of the appellant union before the Industrial Court under Section 28 of the Act alleging unfair labour practice thereunder for causing deduction from the bonus amount payable to the employees for payment of membership fees of BKS for the year 2003. Reference was also made of such deduction in the year 2002. It was averred in the complaint that the members employees of BKS had by then resigned from its rolls and had joined the appellant union. It was alleged that such kind of deduction in absence of any written authority of the employees concerned, did amount to unfair labour practice and that the company and the BKS had joined together arbitrarily in resorting thereto. This complaint was registered as Complaint (ULP) No. 309 of 2003.

27. By order dated 16.10.2003, the Industrial Court,

Pune, on a proposal being made on behalf of BKS and not objected to by the company and the complainant, though permitted the deduction from the bonus amount, it directed that the sum collected be retained with the company and restrained it from defraying the same to any person or union till the complaint was finally decided.

28. It was finally on 28.9.2006 that the Industrial Court decided that the respondents herein namely; company and the BKS had jointly committed unfair labour practice under the Act by deducting the membership subscription of Rs. 100 per employee from the bonus amount payable for the year 2003 and prohibited them from doing so in future. The challenge thereto laid before the High Court was dismissed in limine on 24.03.2008. The High Court upheld the decision of the Industrial Court to the extent of impermissibility of deduction of membership fee but set-aside the finding that the same in the facts and circumstances of the case did amount to unfair trade practice.

29. Pursuant to the order dated 29.09.2004 of the Industrial Court causing an enquiry to be made into the aspect of membership strength of the rival unions, the investigating officer initiated an exercise in course whereof, both the unions submitted original documents in support of their respective claims. The documents included list of members, membership books, receipt book of members, minute book register, computerized cash book, bank pass book, audit report etc. for the relevant period and also beyond the same. Vis-a-vis the appellant union, the investigating officer in his report recorded that from the list of 1973 members that it had produced, 39 were ineligible and thus in all 1934 could be treated as eligible members. Referring to the receipt books of membership, it was recorded that every worker was depositing Rs. 60 per annum and also that in several receipts, no date was mentioned. The investigating officer mentioned, that the bank pass book of the appellant union was with the Syndicate Bank, Chinchwar Branch, Pune and that the contribution by way of membership fee was not being deposited in the account.

30. So far as the documents of the BKS were considered, the Investigating Officer on his inspection thereof, recorded that it had submitted a list of 2166 workers claiming them to be

its members, out of which 41 were found to be ineligible. It was thus set down that 2125 members could be treated as eligible.

31.On a scrutiny of the receipt books of the members, the Investigating Officer opined that no responsible official bearer of the union had signed the same and that it was not maintained as per the provision of the 1926 Act. The particulars of the contribution book were elaborately examined and the deposit of membership fee of 2166 members, was noted. The Investigating Officer was of the view that the cash book of the BKS was not in the prescribed form and was not signed by any responsible office bearer of the union. That there were some anomalies with regard to the dates of the deposits and the receipts, were pointed out as well. It was noted too that out of 2166 members, claimed by the BKS to be in its hold, 54 had either retired or resigned or expired during the period March 2003 to August 2003. On a comparison of the lists of members submitted by the unions, the Investigating Officer noted that 26 and 217 members were exclusively in the ranks of the appellant union and BKS, whereas 1908 members appeared to be common to both the entities, i.e. with dual membership.

32. As mentioned herein above, the parties did adduce oral evidence as well. The two witnesses examined by the appellant union were Madhav son of Baburao Roham and Gugario son of Gabriel D’Souza. Whereas the first witness claimed to be the President of the appellant union, the second said on oath that he was a member thereof having resigned from BKS on 12.12.2002. The President of the appellant union in his deposition stated, inter alia, about the records of its union including minute books, receipt books of membership fees and in general referred to the lists of the employees numbering 1973, who had resigned from the BKS to join his union after 01.01.2003. He claimed that the receipts to the members for the fees were issued and that receipts books in that regard were maintained. He also deposed that the membership fees were being deposited with the bank which, however as the report of the investigating officer would reveal was inconsistent therewith in this regard. He admitted that the accounts of his union used to be audited by a Chartered Accountant not appointed by the Government. He also expressed his inability to produce the minute book of the general body meeting authenticating the members and office bearers of the appellant union.

33. In course of cross-examination, this witness conceded that he had no evidence to show that he was a honorary member of the appellant union in the past. He admitted as well that the account of the appellant union was opened with the Syndicate Bank in the month of January 2003 and though such account previously was with another bank, he was not in a position to either name it or to provide the account number. When confronted with reference to the report of the Investigating Officer that there was a shortfall in the amount claimed to be deposited with the bank compared to the sum received as membership fees, the witness could not provide any explanation therefor. He also conceded that the finding of the Investigating Officer that the membership amount had not been deposited with the bank had remained unquestioned. He was confronted as well with certain omissions in the return filed by the appellant union under the Bombay Trade Unions Regulation, 1947 for the year 2003.

34. The evidence of the other witness i.e. Gugario was essentially to the effect that he had resigned from the membership of BKS to join the appellant union as he along with others, who had similarly drifted to the appellant union, were not receiving any benefit from their parent union i.e. BKS. In course of his evidence, he claimed also to be the Unit President of the appellant union and asserted that there were 1973 members thereof since 2003. In his cross-examination, when asked, this witness could not provide the particulars of the general body meetings or managing committee meetings of the appellant union required to be held as per its constitution. Though he referred to the meeting of the managing committee held on 9.1.2003, he could not furnish the names of the persons present. He also expressed his ignorance about the existence of any consolidated register of all the employees who have been members of the appellant union though from the different companies.

35. The 1556 affidavits filed on behalf of the appellant union were in a particular format, which for ready reference, is being quoted hereunder:

> "AFFIDAVIT
> I, Shri, Age
> Occupation Service, residing at
> State on solemn affirmation as follow:
> I have resigned from the recognized union, namely . Bharatiya Kamgar Sena on 12.12.2002. The said union has never defended the interest of the workers and has worked as per the directions of the Company. Therefore I have resigned from the said Union. I have not paid union subscription to Bharatiya Kamgar Sena since the last two years.
>
> I have accepted the membership of the Applicant Union . namely, Poona Employees Union on 12.12.2002 and today I am a member of Poona Employees Union. Since I along with the other workmen are members of Poona Employees Union and since Bharatiya Kamgar Sena does not have majority of membership since Ist Jan. 2003. I am filing this affidavit so
> that the recognition of Bharatiya Kamgar Sena is revoked.
>
> All that is stated above is true as per my knowledge and information and I have put my signature on it at Pune on 29.9.2004."

36. We have extended our anxious consideration to the rival pleadings and the arguments based thereon. The documents available on record have also received our attention. It is expedient, having regard to the issues raised, to embark on a summary survey of the relevant provisions of the Act in quest of the underlying objective thereof, which in our comprehension, would define, amongst others, the nature, extent and essentialities of the enquiry contemplated and obligated by it in order to determine the eligibility-cum- suitability of a union contending for the status of "recognized union" under the statute.

37. As the preamble of the Act would testify, it is one to provide for the recognition of trade unions for facilitating collective bargaining for the undertakings visualised therein and amongst others, to define and provide for the prevention of certain unfair labour practices and to constitute courts for carrying out the purposes of according recognition to the trade unions and for enforcing the provisions relating to unfair practices. The report of the ''Committee on Unfair Labour Practices", appointed by the State Government to outline the activities of employers and workers and their organizations to be construed as unfair labour practices and to suggest the steps against the perpetrators thereof, preceded the enactment which duly took note of the report of the Committee.

38. The Act contemplates, Industrial Courts to be constituted by the State Government, duties whereof are amongst others, to decide an application by a union for grant of recognition to it, in place of a union which has been recognised thereunder, as well as to decide the complaints relating to unfair labour practices, with the exceptions as enumerated in Item 1 of Schedule IV to the legislation. The Industrial Court under Section 5 is empowered to assign work, and to give direction, to the Investigating Officers in mattes of verification of membership of unions, and investigation of complaints relating to unfair labour practices. Investigating Officers, referred to hereinabove, are appointed by the State Government for the area(s), as may be specified as necessary to assist the Industrial Courts and the Labour Courts in discharge of their duties. In terms of Section 9, it is the duty of an Investigating Officer to assist the Industrial Court in mattes of verification of membership of unions, and assist the Industrial and Labour Courts for investigating into complaints relating to unfair labour practices.

39. Chapter III devoted to recognition of unions, prescribes that any union seeking to apply for being registered as a recognised union of any undertaking has to have membership of not less than 30% of the total number of employees employed in that undertaking for the whole period of six calendar months immediately preceding the calendar month in which it applies. In case, such an application is made, it is incumbent on the Industrial Court, as far as possible, to dispose of the same within a period of three months therefrom.

40. Section 12 provides the manner of disposal of such applications. On the receipt thereof and on the payment of the prescribed fee, as mentioned therein, the Industrial Court, if the application on a preliminary scrutiny is found to be in order, would 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 call upon the other union or unions, if any, having membership of employees in that undertaking and the employers and employees likely to be affected, to show cause as to why the recognition, as prayed for, would not be granted. The Industrial Court, thereafter, on a consideration of the objections, that may be received from any other union or employers or employees, as the case may be, and after holding such enquiry, in such manner as it deems fit, if it comes to the conclusion that the conditions requisite for registration specified in Section 11 of the Act are satisfied and that the applicant union also complies with the conditions enumerated in Section 19 of the Act, would grant recognition to the applicant union and issue a certificate of such recognition in a

form, as prescribed. The caveat in sub¬section (5) of Section 12 is to the effect that Industrial Court shall not recognize any union, if it is satisfied that the application for recognition is not made bona fide in the interest of the employees, but is made in the interest of the employer or to the prejudice of the interest of the employees. The Industrial Court is also debarred from recognizing any union if at any time, within six months immediately preceding the date of the application, the applicant union had instigated, aided or assisted the commencement or continuation of a strike which is deemed to be illegal under the Act.

41. Whereas Section 13 delineates the eventualities and the procedure for cancellation of recognition and suspension of rights of a union, Section 14 predicates the perquisites and the procedure for deciding an application laid before the Industrial Court by any union for being registered as a recognised union in place of an existing recognised union in the undertaking. In terms of this provision, if such an application is made on the ground that the applicant union has the largest membership of employees employed in that undertaking, and if a period of two years has elapsed since the date of registration of the recognised union, it (Industrial Court) would call upon the recognised union by a notice in writing to show cause within thirty days of the receipt thereof, as to why the applicant union should not be recognised in its place.

42. The proviso to Section 14 ordains that the Industrial Court, may not entertain any application for registration of a union, unless a period of one year had elapsed since the date of disposal of the previous application by the same union. Identically, as per the procedure as contemplated in Section 12 of the Act, the Industrial Court, on the expiry of period of notice, if is of the opinion, on a preliminary scrutiny of the application made, that it 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 said notice and call upon other union or unions, if any, having membership of employees in that undertaking, employers and employees likely to be affected by the proposal as to why the recognition as sought for would not be granted. The Industrial Court, thereafter, on a consideration of the objections that may be received and after holding such enquiry as it may deem fit, which may include recording of evidence of witnesses and hearing of parties, if comes to the conclusion that the applicant union had complied 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 had made the application, larger than the membership of the recognised union, then it would recognise the applicant union in place of the recognised union and issue a certificate in such form as may be prescribed. Such an application, as sub-section (5) of Section 14 would denote, is to be disposed of within a period of three months as far as possible.

43. Section 19 appearing under Chapter IV of the Act mandates the obligations of a recognised union, whereunder the rules thereof should provide that:

> “(i) The membership subscription shall not be less than fifty paise per month;

(ii) 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;

(iv) An auditor appointed by the State Government may audit its account at least once in each financial year."

44. Section 30 which defines the powers of Industrial and Labour Courts, does recognise these fora to be Courts vested with the powers of:

"(a) requiring proof of facts by affidavit;
(b) summoning and enforcing the attendance of any person and examining him on oath;
(c) compelling the production of documents and;
(d) issuing commissions for the examination of witnesses."

45. The power to call upon any of the parties to the proceedings before them to furnish in writing, and in such forms as it may think proper, any information considered relevant has also been conferred by this provision.

46. On a conjoint reading of the above referred provisions of the Act, it is abundantly and predominantly clear that the exercise of examining an application of a union in an undertaking seeking the status of recognized union whether by replacing an existing recognized union or not, is neither a routine ritual nor an idle formality. Not only the applicant- union has to be eligible to apply as per the prescriptions with regard to the extent of membership it has to command for the relevant period, its application has to be bona fide in the interest of the employees and it must not have indulged in any activity of instigating, aiding or assisting, the commencement or continuation of a strike during the said period. The detailed procedure in both the eventualities, as contemplated in Sections 12 and 14 of the Act, enjoins a participating enquiry to verily ascertain the membership pattern of the rival unions, and also the existence or otherwise of the disqualifying factors as stipulated by the Act.

47. Section 9(2) of the Act, to reiterate, makes it incumbent on the Investigating Officer to assist the Industrial Court in matters of verification of membership of unions and also to assist the Industrial and Labour Courts investigating into the complaints relating to the unfair labour practice. Axiomatically, thus the enquiry to be undertaken by the Industrial Court, has to strictly comport to the prescripts of the relevant provisions and cannot be repugnant to the letter and spirit thereof. Indubitably, the burden would be on the applicant union to decisively establish its eligibility and suitability for being conferred the status of a recognized union to be adjudged by the legislatively enjoined parameters. Though the enquiry envisages participation of the rival union(s), employers and employees, having regard to the ultimate objective of installing a representative union to secure genuine, effective and collective

negotiations, catering to industrial cohesion, harmony and growth, no compromise or relaxation in the rigours of the requirements of the enquiry can either be contemplated or countenanced.

48. This Court in Automobile Products of India Employees' Union (supra) was seized with a fact situation where in the course of enquiry under Section 14 of the Act, the Industrial Court had acceded to the joint request of the two contesting unions to verify the membership thereof on the basis of the results of a secret ballot. Both the unions had agreed that the issue pertaining to recognition be decided by secret ballots and the union which would muster majority of the votes, should be treated as the recognized union. Accordingly, a secret ballot was held, in which the appellant union therein was found to have secured higher number of voters. The respondent-union submitted its objection principally disputing the cut-off date fixed for the purpose of determining the eligible voters. Be that as it may, the Industrial Court sustained the claim of the applicant union i.e. the appellant. The High Court on a challenge being laid before it by the defeated union as well as two workers thereof, upheld the same and interfered with the order of the Industrial Court.

49. This Court on a exhaustive survey of the relevant provisions of the Act and emphatically underlining the avowed role of a recognized union contemplated thereby, in the interest of stability of industrial relations and peace through collective bargaining, affirmed the determination made by the High Court. This Court propounded that the procedure adopted by the Industrial Court, to grant recognition of a union was one which was clearly alien to the Act. It observed that thereby, the parties were allowed not only to circumvent the provisions of the statute but also it failed to bring about the representative character of the union which was the sine qua non for the recognition to be accorded. That the elective element inherent in the secret ballot had the potential of encouraging the growth of mushrooming unions on the eve of election, outbidding each other in promising returns to the workers merely to assert supremacy, unmindful of the health of the industry leading to unwarranted industrial strife, stoppage of production, closure of the establishment, was underlined as the unhealthy and undesirable consequences of such process.

50. The factual conspectus, albeit, not wholly identical herein, the fact remains that though it had been undertaken by the appellant union that if permitted to file its affidavits, the same would not be utilized to decide the issue of membership and was endorsed as well by the Industrial Court, its decision would clearly reveal that the contents of the affidavits not only had been taken note of by it but also relied upon along with the other materials on record, to eventually hold that the appellant union held in its ranks, the majority membership of the employees of the undertaking. To this extent, we are constrained to hold that the approach of the Industrial Court in deciding the issue of membership cannot be sustained being in derogation of the letter, spirit and objectives of the procedure prescribed by the Act to determine the issue of majority of membership for the purpose of identifying the recognized union of an industrial establishment.

51. To recall, the common averment made in the 1556 affidavits filed by the appellant union is that the employees concerned had resigned from BKS on 12.12.2002 as it did not defend the interest of the workers and had functioned as per the directions of the company. It was further affirmed that the deponent did not pay union subscription to BKS since last year and that he/she had instead accepted the membership of the appellant union i.e. Puna Employees Union on 12.12.2002 and that concludes to be its member on the date of the execution of the affidavit. It was stated further that in view of the resignation of the deponent and others, BKS did not have majority of the membership since 1.1.2003 and that thus its recognition be revoked.

52. Vis-a-vis the demur of the respondents that the appellant union lacked in representative capacity, as it had failed to furnish the schedule to the constitution to disclose its object under clause 2(a) thereof as required under Section 6 of the Union Act, it transpires on the perusal of the said charter that clause 2(a) thereof reads as hereunder:

"The objects of the Union shall be: to organise and unite the persons employed in any Industry, any Factory, any Section, any shop and any establishment within the district of Poona as per
Schedule: in the and to regulate their relations with their employers. "

53. True it is that the extract of this clause in the impugned judgment and order wrongly records "the" preceding the word "industry" instead of "any". However, the copy of the constitution available on records does not contain the schedule as well. We leave it at that.

54. Adverting to the evidence, dehors the affidavits, suffice it to state that the report of the Investigating Officer clearly reveals that the contribution collected from the members of the appellant union had not been deposited in its bank account. This finding, to reiterate, is based on a scrutiny of the original records of the appellant union. Though the then President of the appellant union, in his testimony claimed that the membership fee had been duly deposited in the bank, he conceded that no complaint had been made against the Investigating Officer for incorporating a finding contrary thereto. No overwhelming evidence was also produced to counter this finding. This witness admitted as well that the accounts of the appellant union were not being audited by a Chartered Accountant, appointed by the Government which per se is also in repudiation of the mandate of Section 19(iv) of the Act. This witness in course of the cross-examination was also confronted with the annual return submitted by the union for the period January to December, 2003 in which he admitted that the columns No. 10, 13, 15 and 17 of the prescribed form had been left blank. A perusal of Form No. 1 in which annual returns are to be submitted by a registered trade union in terms of the Bombay Trade Unions Regulations, 1927 framed under Section 29 of the 1926 Act reveals that the blank columns refer to:

> "(a) Number and date of receipt for payment of application fee;
> (b) number of members admitted during the year;
> (c)number of members on books at the end of year i.e., on 31st December;

(d)number of members who paid their subscription for the whole year.
These in the contemplation of this Court are vital informations pertaining to the claim of membership of appellant union, in order to wrest the title of "recognized union" from an existing rival union enjoying the said status."

55. Not only, in the comprehension of this Court, the report of the Investigating Officer based on a scrutiny of all relevant records of the appellant union including the list of employees, membership receipt book, register of membership, cash book, bank pass books etc. does not as such admit of any doubt about its credibility, even some of the affiants, in their cross-examinations, on their affidavits filed in support of the claim of membership of the appellant union, had stated that they had affirmed the same because they were promised by the appellant union that their deducted wages for the go- slow tactics would be reimbursed. Though the respondents have nursed a remonstrance that the permission granted by the Industrial Court to cross-examine only 100 of the affiants out of 1556 deponents did denude them of a valuable right of defence, in our estimate, nothing much turns thereon. No dilation on the decision of this Court in Ayaaubkhan Noorkhan Pathan (supra) is thus warranted.

56. To reiterate, these affidavits could not have been, in the facts and circumstances of the case, and more particularly in view of the undertaking given by the appellant union and also the order to that effect by the Industrial Court that the same would not be used to decide the issue of membership, acted upon for this purpose. It had throughout been in the understanding of all concerned that the contents of the affidavits would be used only for relevant and ancillary purpose but divorced from the issue of membership. The Industrial Court however, in concluding that the appellant union did have more than 30% of the membership of the total employees, took cognizance of these affidavits and relied on the same. The contents of the affidavits, referred to hereinabove, which are identical and in a format are to the effect that the deponents had not paid subscription to the BKS for the last two years and that they had accepted the membership of appellant union on 20.12.2002 and that BKS does not have majority of the membership since 1.1.2003. These affidavits taken on their face value, irrefutably testified on the aspect of membership of the two unions and though the Industrial Court did endeavour to construe the same for the purpose of ascertaining the intention of the affiants to support the appellant union, it indeed had a decisive bearing on its ultimate conclusion of its majority membership.

57. We have perused the materials on record, relevant to the issues involved and are of the considered opinion that dehors the affidavits, the evidence or the materials laid by the appellant union are not overwhelmingly determinative of its claim of majority membership as required under Sections 11,12, and 14 of the Act. The adjudication on the issue of deduction of bonus amount by the company for adjustment against the membership fee of BKS in the background pertaining thereto and narrated hereinabove does not conclusively clinch the cause in favour of the appellant union. The decision of this Court in Balmer Lawrie Workers' Union (supra) is as such of no avail to it.

58. Having regard to the judicially acknowledged and proclaimed contours of the jurisdiction under Article 136 of the Constitution of India, we are of the unhesitant opinion that the impugned decision does not merit annulment. As it is, the extra-ordinary jurisdiction of this Court under Article 136 of the Constitution, is to be exercised sparingly and even mere errors in the appreciation of the evidence on record are insufficient to attract this Court's invigilatory intervention thereunder. It is a trite proposition, that this Court may interfere in rare and exceptional cases where manifest illegality or grave and serious miscarriage of justice has been occasioned by the decision under scrutiny as has been propounded by this Court in *Union of India and others Vs. Gangadhar Narsingdas Aggarwal*[5]. If two views are possible and the view taken in the impugned decision is a plausible one, it would not warrant intervention of this Court under Article 136 of the Constitution of India.

59. In the facts of the present case, in our estimate, the analysis and evaluation of the materials on record as undertaken cannot be denounced as illogical, irrational or uncalled-for and the view recorded in the impugned judgment and order is one permissible on the basis thereof.

60. We have perused the impugned judgment and order. In the above presiding backdrop of facts and law, we are of the unhesitant opinion that the view taken by High Court is plausible and rational being based on a logical analysis of the materials on record and the law applicable does not merit any interference at our end. Having regard to the paramount objectives of the Act and in the interest of industrial orderliness, stability, peace and overall wellbeing as well, we find no persuasive reason to intervene at this distant point of time. The appeals fail and are, accordingly, dismissed. No costs.

Judgment Referred.

[1](1990) 2 SCC 0444
[2]1984 Supp. SCC 0663
[3](2015) 2 SCC 0526
[4]2013 (4) SCC 0465
[5](1997) 10 SCC 0305