Forbes Forbes Campbell & Co., Ltd. vs Engineering Mazdoor Sabha on 1 March, 1977

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Bench: Jaswant Singh, R.S. Sarkaria, V.R. Krishna Iyer

JUDGMENT

V.R. Krishna Iyer, J.

1. Brevity is a necessity in a judgment which proceeds substantially on a consensus among counsel as regards the manner of disposal. Therefore we will be brief in narrating a few facts stating a little law and proceeding straight to the directions to be issued in the light of the controversy arising herein. However, we may indicate even here that there is one question of law which is contentious on which we propose to indicate our view in a general way. This we do because counsel on both sides have pressed that it will be helpful since the High Court has laid down its interpretation with which we do not agree.

2. The Maharashtra (Recognition of Trade Unions and Prevention of Unfair Labour Practices) Act, 1971 (for short, the 'Ace') although passed by the legislature in 1971, was, for inscrutable reasons, brought into force on 8th September, 1975. Whether this can be called laws delay or implementation gap is a matter of phraseology but the fact is that when the legislature makes a law (especially, welfare law for the weaker section of the community) it is implicit that the benefits of the legislation to the consumers thereof shall not be delayed by the Executive by bringing it into force long years later. This is another dimension of laws delays not fully known to the public.

3. The respondent union applied for recognition under the Act, on 15th December, 1975, to the appropriate authority, viz., the Industrial Court, Admittedly the union then commanded the requisite qualification of 30 per cent membership. But then there are other condition also necessary before an application for recognition can be accorded. At this stage, we may express our pensive reflection on the fact that notwithstanding the direction in Section 11(2) that an application for recognition shall be disposed of, as far as possible, within three months from the date of receipt of the application this particular proceeding has been pending well beyond one year for reasons which we need not investigate here. It is a bad omen for industrial processual justice.

4. When the application for recognition was pending, the employer moved the High Court for

issuance of an appropriate writ questioning the competence of the union to get recognition. Two grounds were urged without succes Section The first was that the requirements of Form 'A' read with Rule 4 promulgated in exercise of the powers conferred by Section 61 had not been complied with end for that reason alone the application was bound to be dismissed.

5. By way of aside we may mention that Section 12 provides that when an application from a union for recognition is made, notice thereof shall be given in the specified manner and it is open to any other union or unions to raise objections and claim recognition provided the union or unions could claim membership of employees in the concerned undertaking. In the present case another such union appears to have raised such an objection and is represented before us by Mr. K.P. V. Menon.

6. The core of the dispute is as to whether form 'A' should be so read as to insist upon the rejection of the application for recognition if the conditions contained in Columns 7 and 11 (2) therein are not complied with. We may read those conditions in form 'A'.

Condition 7. The Constitution of the applicant union provides for the matters mentioned in Section 19 of the Act. A copy of the Constitution is attached.

Condition 11 (2) : The Executive Committee of the applicant union met on the following dates during the twelve months preceding the date of the application.

Section 19 makes it obligatory upon a union seeking recognition under the Act to provide for a few matters one of which is that an auditor appointed by the State Government may audit its account at least once in each financial year.

All the points mentioned above have to be provided in the Constitution of the applicant union.

7. So far as we are concerned, the applicant union i.e. the respondent before us has amended its Constitution in terms of Section 19(4) although it is pointed out that there is some other litigation bearing on this question. For the purpose of this case, however, we take it that the Constitution of the applicant union conforms to Section 19(4) of the Act and proceed on that footing. Although there may be technical merit in the plea that until the Registrar of Trade Unions formally approves this amendment of the union and registers it, it does not become part of the constitution. Shri F.S. Nariman, appearing for the employer, has for the purpose of this case agreed that this time infirmity need not stand in the way of the applicant union being qualified for recognition, if, otherwise, it is eligible.

8. This takes us to a consideration of the other two questions we have already indicated. Thus, has the union conformed to the requirements set out in Clause 11(2) of Form 'A'? Secondly, is this conformance mandatory before an applicant can seek recognition? The High Court has taken the view that it is not as if the union should have held the requisite meetings of the Executive Committee as stipulated in Clause 11(2) before the date of filing the application for recognition. According to the High Court, Section 19(2) providing that the Executive Committee of the union shall meet at intervals of not more than 3 months is not something to be fulfilled anterior to the date of the

application and therefore it is not proper to reject an application made by the union merely because its executive committee has not met at intervals of not more than 3 months during the 12 months preceding the date of the application. Section 19(2), read with Clause 11(2) of Form ' A', prima facie suggests that any union which seeks recognition under this Act must observe the conditions necessary therefore. One of the conditions necessary is, according to Form A, the holding, within the 12 months preceding the date of the application, of meetings of the Executive Committee in terms of of Section 19(2). Shri Damania argues that the situation would become unworkable if the construction that is suggested by the appellant's counsel were adopted. Form A cannot toe given the status of a provision in the Act itself and, in any case, applicants who have moved the Industrial Court within 12 months of the coming into force of the Act cannot, ordinarily, be expected to comply with the provisions of Section 19(2) and Clause 11(2) of Form A. It is plausible to contend that Section 11(1) insists that the applicant union should apply in the prescribed form for being registered as a recognised union, which takes us to the prescribed form, i.e. Form A. Moreover, the expression "union which seeks recognition" has also been emphasised before Section Taking an overall view of the provisions of law, viz., Section 11, 12 and 19 and Rule 4 and Form A, which must all be read together, we are satisfied that any union which seeks recognition and applies in that be-half must, when it applies, be able to convince the Industrial Court that it is qualified for recognition. This means that on or about the date on which it seeks recognition, that is the date of the application or at least the time when notice is served under Section 12, it possesses the percentage of members required and has its Constitution in conformity with Section 19 and Rule 4 and otherwise has complied with the requirements of Form A, - in this particular case Clause 11(2) of Form A. Of course, we agree 'that Form A has to be read not rigidly but flexibly and with an amount of latitude. In that sense, substantial compliance will be sufficient. To make our point we may illustrate : supposing within 12 months prior to the application, meetings have been held as required by Section 19(2) but a day or two this side or that, it has tripped that does not disqualify. It is also possible to conceive of other inconsequential deviation Section Such minor departures cannot have an invalidatory effect. However, the requirements we are concerned with in the present case are different The Constitution must provide for Government audit. This is mandatory. likewise, the sections of the union must provide for periodical meeting of the Executive Committee in terms of Section 19(2), not meticulously but substantially in terms thereof. The hardship that is pointed out by counsel for the respondent, at the most, operates for one year from the date of the coming into force of the Act and more than that period has already elapsed. So much so we are not impressed that many unions are likely to be handicapped by such a construction as has appealed to us.

9. The law as laid down by the High Court does not appear to us to be correct. We make it clear that an applicant union must have at the time of its application or within the period when Section 12 comes into play a Constitution which is in ac cord with Rule 4 and it must qualify as required under Section 19(2). It must sub stantially fulfil the needs of Clause 11(2) of Form A. Technicalities, however, should be overlooked in this area and the sub stance of the matter alone should be focussed upon by the Tribunal.

10. Counsel for the respondent rightly pointed out that if applications made by the unions for recognition within one year of the coming into force of the Act are rejected on the ground that they have not complied, with Form A as we have interpreted it there may be a bar for a fresh application

until the lapse of an other year. We are clear in our minds that the proviso to Section 14(1) shall not operate as a bar because the application for registration in not being considered on merits and the bar is not attracted. Therefore, the apprehension of counsel for the respondent is misplaced.

11. We may mention that counsel for both the unions have assured the Court that there may not be any disturbance to the industrial peace in the factory concered. We need hardly say that the Management will also benefit by keeping, on its side, exercise of a similar restraint. We are not implying by these observations one way or the other that either party has violated industrial peace. That is a matter for separate investigation.

12. Now that we have stated the law governing the situation, we proceed, by consent of both sides, to issue certain directions in this case. We are grateful to counsel that they have been able to reach a consensus on the course of action to be adopted. In that light, we are updating the situation, as it were, and the requirements expected of the applicant union will be related to 26th February, 1977. It is agreed by both sides and Shri K.P.V. Menon, appearing for the other union, that the Industrial Court be directed to make a report to this Court on certain specified matter Section The Industrial Court will direct the Investigating Officer (specified in Section (9) to enquire and make a report to it as to which of the two unions has the majority of members on its rolls for the period of six months preceding 28th February, 1977. The membership, of course, will depend on the prescriptions in the law, such as regarding payment of subscription etc. The Investigating Officer will satisfy himself about the free choice of the members regarding their steady allegiance to one union or the other. Secondly, the Industrial Court will also make a report to this Court about the points mentioned in Section 13(5) and (6). The respondent union, as well as the F.F.C. Union and the employer, shall be heard by the Industrial Court briefly before a report is made to this Court. We clarify that while considering the question covered by Section 12(6) of the Act the Industrial Court will confine itself to the period of 6 months immediately preceding 28th February, 1977.

13. The Industrial Court will make this report within two months from the date of receipt of the order of this Court. The Investigating Officer's report will also be forwarded by the Industrial Court along with its report, together with any comments it wishes to make.

14. For the purpose of this case, the Industrial Court will proceed on the assumption that the amendment of the respondent's Constitution regarding Government audit is already part of the constitution.