Balmer Lawrie Workers' Union, Bombay ... vs Balmer Lawrie And Co. Ltd. And Ors on 21 December, 1984

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Author: D.A. Desai

Bench: D.A. Desai, V. Khalid

PETITIONER:
BALMER LAWRIE WORKERS' UNION, BOMBAY AND ANR

Vs.

RESPONDENT:
BALMER LAWRIE AND CO. LTD. AND ORS.

DATE OF JUDGMENT21/12/1984

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
KHALID, V. (J)

CITATION:
1985 AIR 311 1985 SCR (2) 492
1984 SCC Supl. 663 1984 SCALE (2)1000
CITATOR INFO :
D 1988 SC1829 (6)

ACT:
Constitution of India, 1950, Articles 14,19 (1) (a) and (c)-Sec. 20 Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971 conferring exclusive right on recognised union to represent workmen in disputes-Whether ultra vires the Constitution.

Maharashtra Recognition of Trade Unions and Prevention of Unfair Practices "Act 1971, Sec. 20(2) (b) -Exclusive Right conferred on recognised union to represent workman in disputes Constitutional validity of Art. 14 and 19 (1) (a) and (c) of the Constitution.

Industrial Disputes Act-Settlement between employer and recognised union-Provision for deduction of 15% from gross arrears payable Jo all workmen including members of

unrecognised Union-Amount to be credited to recognised Union's fund-Constitutional validity of - Whether unconstitutional vis-a-vis workmen of unrecognised Union.

Payment of Wages Act -Deduction made from wages and salary payable to an employee-Such deduction not authorised by the Act but by a Settlement- Consent of Parties for such deduction from wages-Validity and effect of.

HEADNOTE:

Section 19 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971 (1971 Act, for short) provides for recognition of a union if it complies with certain conditions specified in the section. Section 20 enumerates the rights of a recognised union. Clause (b) of sub-sec. (2) of s.20 confers an exclusive right on a recognised union to represent workmen of an undertaking in certain disputes and makes the decision or order made in such proceedings binding on all the employees while it denies such right to a workman to appear or act or to be allowed to represent in any proceedings under the Industrial Disputes Act 1947 except in a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment. termination of service or suspension of an employee is under consideration.

After a strike, the respondent-employer entered into a settlement in respect of a number of pending industrial disputes with its union, which was recognised under the 1971 Act. Clause 17 of the Settlement provided that the
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company shall deduct an amount equivalent to 15% of the gross arrears payable under the Settlement to each employee towards contribution to the fund of the recognised union- The appellant, a non-recognised union challenged in a writ petition before the High Court the constitutional validity of Clause 17 of the Settlement on the grounds, inter alia. (i) that Clause 17 permits a compulsory exaction not parented by the Payment of Wages Act from the arrears payable to the workmen who are not the members of the recognised union; (ii) that section 20 of the 1971 Act is unconstitutional, since (a) it 1 unquestionably denies to the workman who are not members of a recognised union, the fundamental freedom guaranteed under Article 19 (1) (a) and(e) inasmuch as it inheres the pernicious tendency to compel the Workmen to join the union which has acquired the status of a recognised union even if it followed a socio-economic or socio-political philosophy contrary to the philosophy of non-members; (b) it denies to the unrecognised union, the right to effectively participate in any proceeding concerning the workmen of an industrial undertaking, some of whom have formed a separate trade union and (c) it does not treat all the unions at par as the

members of non-recognised union are compelled to be bound by the action of the recognised union. The Single Judge of the High Court dismissed the writ petition and the same was affirmed in appeal to the Division Bench of the High Court. Hence this appeal.

Dismissing the appeal by the appellant,

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HELD: 1.1. In order to appreciate the controversy between the parties a brief review of the Scheme of the 1971 Act would be advantageous. On the advent of industrial revolution which aimed at mass production of commodities, large scale industrial units came to be set up resulting in concentration of workmen at one place under one employer. Trade union movement representing the organised labour developed as an adjunct of political party. The organised Labour as a vote banks was assiduously wooed by political parties. Every political party with a view to controlling vote banks set up its labour wings. Combinations and fragmentations of politics] parties had the pernicious effect on trade union. Multiplicity of political parties had its spill over in multiplicity of trade unions seeking to represent workmen in an industrial undertaking or industry, as the case may be. The fall out of the multiplicity of unions was inter union and intra-union rivalry which threatened peaceful working of the industrial undertaking or the industry. Each union, as the unfortunate experience shows, tried to over-reach the rival by making occasionally experience and untenable demands. The emerging situation led to conflict and confrontation disturbing industrial peace and harmony directly affecting production. Therefore, a need was felt that where there are multiple unions seeking to represent workmen in an undertaking or in an industry, a concept of recognised union must be developed In fact, even amongst trade union leaders there was near unanimity that the concept of recognised union as the sole bargaining agent must be developed in the larger interest of industrial peace and harmony. National Commission on Labour also after unanimously and whole-heatedly expressing itself in favour of the concept of recognised union and it being clothed with powers of sole bargaining agent with exclusive right to r-present workmen, addressed itself only to the question of the method of ascertaining which amongst various rival unions must be accorded the status of a recognised union and it was agreed that the union which

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represents the largest number of workmen working in the undertaking must acquire the status as that would be in tune with the concept of industrial democracy. [499H; 501B; 502G-H; 503A-B; D-G]

1.2. It is therefore clear that every one was agreed that where there are multiple unions in an industrial undertaking or an industry, the union having the largest membership of the workmen must be clothed with the status of

recognised union and consequently as the sole bargaining agent. The under lining assumption was that the recognised union represents all the workmen in the industrial undertaking or in the industry. Thus, the 1971 Act was enacted as its long title shows to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings, to state their rights and obligations, to confer certain powers on unrecognised unions; to provide for declaring certain strikes and lockouts as illegal strikes and lock-outs; to define and provide for the prevention of certain unfair labour practices; to constitute courts (as independent machinery) for carrying out the purposes of according recognition to trade unions and for enforcing the provisions relating to unfair practices etc. [504A-B; 499E-F]

1.3. Status to be the sole bargaining agent as a recognised union is a hard won battle and need not be permitted to be frittered away by a sentimental approach that where trade union movement has ideological overtones, such a provision would compel workmen either to become members of a union, whose socio-political philosophy is not in tune with his own or suffer isolation as such workman cannot forge a tool of a trade union or even if they forge one, the employer can ignore it with impunity. The matter cannot be viewed from the perspective of same ideloguis but has to be examined in the large perspective of public interest of peace and harmony in the industry, healthy industrial relations and large national interest which eschews strikes, lock outs, conflict and confrontation. [504H, 505A-B]

2.1. Sec. 20, sub-sec. 2 while conferring exclusive right on the recognised union to represent workmen in any proceeding under the Industrial Disputes Act, 1947 simultaneously denying the right to be represented by any individual workman has taken care to retain the exception as enacted in Sec. 2A of the Industrial Disputes Act, 1947. This legal position is reiterated in Sec. 20(2) (b) . Therefore, while interpreting Sec. 20(2) (b), it must be kept in view that an individual workman, who has his individual dispute with the employer arising out of his dismissal, discharge, retrenchment or termination of service will not suffer any disadvantage if any recognised union would not espouse his case and he will be able to pursue his remedy under the Industrial Disputes Act, 1947. Once this protection is assured, the question is whether the status to represent workmen conferred on a recognised union to the exclusion of any individual workman or one or two workmen and who are not members of the recognised onion would deny to such workmen the fundamental freedom guaranteed under Art. 19(1) (a) and 19(1) (c) of the Constitution. [506B-D]

2.2. The restriction on the right to appear and participate in a proceeding under the Industrial Disputes Act, 1947 to a workman who is not prepared to be represented

by the recognised union in respect of a dispute not personal to him alone such as termination of his service does not deny him the freedom

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of speech and expression or to form an association. Conferring the status of A recognised union on the union satisfying certain pre-requisites which the other union is not in a position to satisfy does not deny the right to form association [506E.F]

2.3. Forming an association is entirely independent and different from its recognition. Recognition of a union confers rights, duties and obligations Non-conferring of such rights, duties and obligations on a union other than the recognised union does not put it on an inferior position nor the charge of discrimination can be entertained. The members of a non-recognised association can fully enjoy their fundamental freedom of speech and expression as also to form the association. The Legislature has, in fact, taken note of the existing phenomenon in trade unions where there would be unions claiming to represent workmen in an undertaking or industry other than recognised union. Sec.22 of 1971 Act confers some specific rights on such non-recognised unions, one such being the right to meet and discuss with the employer the grievances of individual workman The Legislature has made a clear distinction between individual grievance of a workman and an industrial dispute affecting all or a large number of workmen In the case of even an unrecognised union, it enjoys the statutory right to meet and discuss the grievance of individual workman with employer. It also enjoys the statutory right to appear and participate in a domestic or departmental enquiry in which itsh member is involved. this is statutory recognition of an unrecognised union. The exclusion is partial and the embargo on such unrecognised union or individual workman to represent workmen is in the large interest of industry, public interest and national interest. Such a provision could not be said to be violative of fundamental freedom guaranteed under Art. 19(1)(a) or 19(1)(c) of the Constitution. [506H; 507A-D]

3. Where a representative union acts in exercise of the powers conferred by Sec 20(2) it is obligatory upon it to act in a manner as not to discriminate between its members and other workmen of the undertaking who are not its members. However when a settlement is reached in a proceeding under the Industrial Disputes Act in which a representative union has appeared, the same is to be binding on all the workmen of the undertaking This would mean that neither the representative union nor the employer can discriminate between members of the representative union and other workmen who are not members. Both the benefits, advantages, disadvantages or liabilities arising out of a settlement in any proceeding under the Industrial Disputes Act to which a representative union is a party shall be

equally applicable to each workman in the undertaking There shall not be the slightest trace of discrimination between members and non-members both as regards the advantages and also as regards the obligations and liabilities. Any other view of Sec. 20(2)(b) would render it unconstitutional and invalid as being violative of Art. 14. Equal treatment of members and non-members is implicit in the section and by its interpretation this Court only makes it explicit. [511F-H; 512A-B]

(4) It is well known that no deduction could be made from the wages and salary payable to a workmen governed by the Payment of Wages Act unless authorised by that Act. A settlement arrived at on consent of parties can however permit a deduction as it is the outcome of understanding between the parties even though such deduction may not be authorised or legally permissible under the Payment of Wages Act. [512D-E] H

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(5) If under a settlement with the representative union some benefits accrue to the workmen, and upon a true interpretation of Sec. 20(2)(b), it is held all encompassing and therefore binding on all workmen employer alike, all the benefits would be available to the workmen who are not members of the representative union and who may have formed a rival union. If these work- i men could not be denied the benefits, they would enjoy an unfair advantage if from the package deal covered by the settlement, they draw benefits and abjure liabilities. therefore, a clause like Clause 17 of the Settlement has to be understood in the context of strengthening the trade union movement and to free it from financial constraints. Workmen who are members of a union may pay fee for membership and enjoy the advantage or membership put if by the action of the representative union all workmen acquire benefit or monetary advantage, the members and non-members alike can be made to make common sacrifice in the large interest of trade union movement and to strengthen the trade union which by its activities acquired the benefits for all workmen. Payment to trade union fund in these circumstances can be styled as quid pro quo for benefits acquired. It can neither be said to be compulsory exaction nor a tax. Therefore, there is nothing objectionable in Clause 17 of the Settlement which directs the employer to deduct 15% of the gross arrears payable to each employee under the settlement as contribution to the trade union funds. Thereby the workman is not subscribing to the philosophy of rival union but he is merely paying the price of the advantage obtained. Another view would make the union members suffer and the non-members benefit, a situation which must at all costs be avoided. Therefore clause 17 of the Settlement would not be invalid despite the lack of consent of the workmen who are members of the appellant union. The settlement having been made by the representative union, its right to represent all workmen

would imply the consent of the members of the rival union. This is the legal consequenee of the right of the representative union to represent all workmen and the binding effect of its action. [513G-H; 514A-E]

Reg. v. Duffield, 5, Cox's Criminal Case, 404 referred to.

Raja Kulkarni and Ors. v. State of Bombay [1954] SCR 384, relied upon.

Rum Prasad Vishwakarma v. The Chairman Industrial Tribunal, [1964] 3 SCR 196, held in-applicable.

Girja Shankar Kashi Ram v. Gujarat Spinning and Weaving Mills Ltd. [1962] 2 Supp. SCR 890 and Santuram Khudai v. Kimatrai Printers & Processors (P) Ltd. & Ors., [1978] 2 SCR 387, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3527 (NL) of 1984 From the Judgment and Order/decree dated July 27, 1984 of the High Court of Bombay in Appeal No. 660 of 1984. Danial Latifi, V.S. Desai R.S. Sodhi, K.V. Sreekumar, M.N. Shroff and Ms. Radha-de' Souza for the Appellants.

M.K. Ramamurthi, Mrs. Urmila Sirur, F.D Damania, A.M. A Dittia and D.N. Misra or the Respondents.

M.N. Shroff the State of Maharashtra The Judgment of the Court was delivered by DESAI, J Two unions of workmen employed in the first respondent Company M/S Balmer Lawrie & Co. Ltd ('employer' for short) are at logger-heads and their inter-se rivalry has thus landed in this Court. Appellant Balmer Lawrie Workers Union ('non-recognised Union' for short) filed Writ Petition No. 1518 of 1984 in the High Court of Judicature at Bombay challenging the constitutional validity of Sec. 20 (2) read with Schedule I of the Maharashtra Recognition of Trade Union & Prevention of Unfair Labour Practices Act, 1971 ('1971 Act' for short). To this petition, they impleaded the employer company and the Balmer Lawrie Employees Union ('Recognised Union' for short).

Few facts giving rise to the writ petition may be stated. A settlement was arrived at between the employer and the recognised Union resolving a number of industrial disputes pending between them. Clause 17 of the Settlement reads as under:

> "17. Arrears will he paid within two months from the date of signing of the. Settlement. Further, the Company shall collect from each workman an amount equivalent to 15% of the gross arrears payable to each employee under this settlement as contribution to the Union Fund and this Amount shall be paid to the Union within 3 days of the payment of arrears by Payee's .A/c Cheque."

The non-recognised union -the appellant apprehending that if and when settlement would be arrived at between the employer and the recognised union, there would be the usual clause for deduction from amounts payable to the workmen under the settlement for the benefit of the recognised union Therefore the non-recognised union informed the employer not to make any deduction pursuant to the settlement from the arrears payable to the members of the non-recognised union as and when the settlement is arrived at. Correspondence ensued between the parties which led to the filing of the writ petition No. 473 of 1984. This writ petition was moved to forestall the settlement if any about any deduction from the payments under the settlement as and when arrived at. An undertaking was given before the High Court that the employer would give notice of the settlement, if it is finally arrived at and will implement the same only a week thereafter. On this undertaking, the writ petition was withdrawn. Thereafter the settlement was arrived at which inter-alia included Clause No. 17 extracted hereinbefore. The non-recognised union filed a fresh writ petition inter alia contending that Clause 7 permits a compulsory exaction not permitted by the Payment of Wages Act from the arrears payable to the workmen by the employer, without the consent of the workmen, who are not the members of the recognised union. It was alleged in the petition that if upon its true construction Sec. 20 (2) (b) of 1971 Act permits such compulsory exaction without the consent of the workmen concerned, the same will be unconstitutional inasmuch as such union levy would force and compel the workmen against their will to join the union which has acquired the status of recognised union. Specific allegation was that Sec. 20 (2) violates the fundamental freedom to form association guaranteed by Art 19 (1) (c). There were other incidental grievances made in the petition but the main thrust of the petition was against the constitutional validity of aforementioned section. The learned Single Judge dismissed the writ petition and after an unsuccessful appeal to the Division Bench of the High Court this appeal was filed by special leave Mr. Daniel Latifi learned counsel who appeared for the appellant assisted by Mrs. Radha D. De'souja, the President of non-recognised union and also as counsel appearing for non-recognised union urged that if Sec. 20 (2) is so interpreted as to mean that the employer or the recognised union can discriminate between the members of the recognised union and non-members though workmen of the same employer, the same is violative of Art. 14 and if it compels the workmen to join recognised union it is violative of Art. 19 (1) (a) and (c).

Sec. 20 of the 1971 Act enumerates the rights of the recognised union. Sec. 20 (2) reads as under:

> "20 (2): Where there is a recognised union for any undertaking,-
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> (a) that union alone shall have the right to appoint its nominees to represent workmen on the Works Committee constituted under Section 3 of the Central Act:
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> (b) no employee shall be allowed to appear or act or be Hallowed to be represented in any proceedings under the Central Act (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee is under consideration), except through the recognised union; and the decision arrived at or order made, in such proceeding shall be binding on all the employees in such undertaking;

and accordingly the provisions of the Central Act, that is to say, the Industrial Disputes Act, 1947, shall stand amended in the manner and to the extent specified in Schedule I."

Does Sec. 20 (2) which confers an exclusive right to represent workmen of any undertaking on a union which acquires the status of a recognised union under 1971 Act and simultaneously denies the right to a workman to appear or act or to be allowed to represent in any proceeding under the Industrial Disputes Act, 1947 ('lD Act' for short) violate the fundamental freedom to form association guaranteed by Art 19 (1) (c).

The 1971 Act was enacted as its long title shows to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings, to state their rights and obligations, to confer certain powers on unrecognised unions; to provide for declaring certain strikes and lock-outs as illegal strikes and lock-outs; to define and provide for the prevention of certain unfair labour practices; to constitute court (as independent machinery) for carrying out the purposes of according recognition to trade unions and for enforcing the provisions relating to unfair practices etc There is in force in the State of Maharashtra a comprehensive legislation, Bombay Industrial Relations Act, 1946 touching almost all aspects of industrial relations but it applies only to specified industries. Industries other than specified industries are governed by industrial Disputes Act, 1947. This latter act is not comprehensive in character There is no provisions for recognising union vis-a-vis the undertaking or the industry. Unions of workmen employed by undertakings not governed by Bombay Industrial Relations Act voiced dissatisfaction over this discriminatory treatment and the lacuna in the 1947 Act. To bring the provisions of both the acts on par in certain specific areas 1971 Act was enacted by the State Legislature.

A brief review of the scheme of the 1971 Act would be advantageous. It specifically provides for recognition of unions. A conspectus of provisions included in Chapter III headed recognition of unions provide that every undertaking wherein 50 or more employes are employed or were employed on any day of the preceding 12 months will be governed by the provisions therein set out. Sec. I l provides for making of an application for recognition of union. The eligibility criterion for obtaining the recognition is that the union applying for the status of a recognised union must have for the whole of the period of six calendar months immediately preceding the calendar month in which it makes the application, a membership of not less than thirty percent of the total number of employees employed in any undertaking. The application has to be made to the Industrial Court set up under the Bombay Industrial Relations Act. On receipt of the application, the Industrial Court has to cause a notice to be displaced on the notice board of the undertaking, declaring its intention to consider the said application on a date to be specified in the notice and calling upon other union or unions, if any, having membership of employees in that undertaking and the employers and the employees affected by the proposal to show cause why the recognition should not be granted. If after considering all the objections that may have been lodged pursuant to the notice given as hereinbefore indicated, the industrial Court comes to the conclusion that the conditions requisite for registration are satisfied and the union complies with the conditions specified in Sec 19, the Industrial Court shall grant recognition to the applicant union under the Act and issue a certificate in the prescribed form. At any point of time, there shall not be more than one recognised union in respect of the same undertaking. Sec. 13 confers power on the Industrial Court to cancel the

recognition if any of the circumstances therein set out is satisfactorily established. Sec. 14 provides for resolving the dispute inter se between the recognised union and another union seeking recognition. The obligations and rights of the recognised union are set out in Secs. 19 and 20 in Chapter IV.

Mr. Daniel Latifi, learned counsel urged that the embargo placed by Sec. 20 (2) (b) on any workman to appear or to be represented in any proceeding under the ID Act 1947 barring those which are specifically excluded save by the recognised union contravenes the fundamental freedom guaranteed to the citizens under Art 19 (1) (a) and (c) of the Constitution Art. 19 (1) (a) guarantees to the citizens fundamental freedom of speech and expression and Art. 19 (1)

(c) guarantees fundamental freedom to form association. Tersely put the question is: if a law relating to regulating industrial relations between the employer and workmen provides for a sole bargaining agent such as the recognised union and simultaneously denies to the individual workman the right to appear or to be represented in any proceeding under the ID Act, 1947, would it contravene the fundamental freedoms guaranteed by Art. 19 (1) (a) and 19 (1) (c) ?

History bears a witness to the long-drawn out unequal fight between the employer and the employed to be on terms of equality. A brief resume would be helpful.

On the advent of industrial revolution which aimed at mass production of commodities, large scale industrial units came to be set up resulting in concentration of workmen at one place under one employer. Individual employer has now been replaced by corporations wielding immense economic power. To say that workmen were at the mercy of the employer is to state the obvious. It was even sacrilegious to think of a right of a workman qua the employer Till the laissez faire ruled the roost the State would not interpose itself to protect the under-privileged and weaker partner in the industry and left the workmen to fend for themselves, the State concerning itself only with the problem of law and order when a conflict arose between the employer and the workmen. This was predicated upon an untenable if not wholly erroneous assumption that as the society has moved from status to contract, the employer and the workman would by negotiations churn out a contract mutually beneficial to both. That the parties were unevenly placed in the matter of contracting was absolutely over looked. The liberal albeit capitalist English society treated united refusal of work on the part of workmen as conspiracy and as Jeremy Benthan put it "the word conspiracy served judges for an excuse for inflicting punishment without stint on all persons by whom any act was committed which did not accord with the Judges' notion concerning the act in question." Justice Erle in Reg. v. Duffield(1) summed up to the Jury as under:

> "The unlawful combination and conspiracy is to be inferred from the conduct of the parties. If several persons take several steps, all tending towards one obvious purpose, it is for the jury to say whether these persons have not combined together to bring about that and which their conduct appears adapted to effectuate."

English Common Law frowned upon combination of workmen to achieve common object; Common Law looked upon combination as criminal in character. On the enactment of the Trade Unions Act,

1913 in United Kingdom, registered trade union acquired corporate (1) 5, Cox's Criminal case. 404.

capacity, entitled to sue and be sued in its registered name and enter into contracts as separate entity, separate from its members. This status acquired by the trade unions, would clothe a collective agreement arrived at between the employer and the union with the semblance of legality though Common Law for long refused to recognise it as enforceable contract. Royal Commission on Trade Unions and Employer's Association under the Chairmanship of Lord Donovan ('Donovan Commission' for short) which submitted its report in 1968 proceeded on the basis that collective bargains are not subject to legal enforcement and number of arguments were put forth in support of the proposition. Even though the Commission in concluding portion of paragraph 472 of its report observed that "Industrywide bargaining and workshops or plant bargaining are, however, closely intertwined. To enforce one without the other would be to distort the effect of our collective system. That system is today a patch-work of formal agreements, informal agreements and custom and practice. No Court, asked to enforce a collective agreement could disentangle the agreement from the inarticulate practices which are its background." Quest of justice by labour, victim for long of exploitation of human being by impersonal juristic persons such as corporations led to the formation of industrial norms by a legislative enactment generally styled as labour law. The main object of labour law was to be a countervailing force to counter-act the inequality of bargaining power which is inherent and must be inherent in the employment relations. As stated by Otto-Khan-Freund in his Hamalin lecture "this was an attempt to infuse law into a relationship of command and obedience, in other words in the field where one enjoys the power to command and other suffers the duty to obey. To the extent law limits the range of workers' duty of obedience and enlarges the range of its freedom, Labour Law fulfills one of its objects."(1) In the context of the political society which we resolved to set up in the post-independent India, on the introduction of universal adult suffrage by Art. 326 of the Constitution trade union movement representing the organised labour developed as an adjunct of political part. The organised labour as a vote bank was assiduously wood by political parties. Every political party with a view to controlling vote banks set up its labour wings. Combinations and fragmentations of political parties had the pernicious effect on trade unions. Multipli-

(1) See Report the Labour Laws Review Committee, Govt. of Gujarat Publication 1974 Page 5.

city of political parties had its spill over in multiplicity of trade unions A seeking to represent workmen in an industrial undertaking or industry, as the case may be. The fall out of the multiplicity of unions was inter-union and intra-union rivalry which threatened peaceful working of the industrial undertaking or the industry. Each union, as the unfortunate experience shows, tried to over-reach the rival by making occasionally exhorbitant and untenable demands. The emerging situation led to conflict and confrontation disturbing industrial peace and harmony directly affecting production In the first Five Year Plan it was observed:

> "Answer to class antagonism and world conflict will arrive soon if we succeed in discovering a sound basis for human relations in industry. Industrial relations are there fore, not a matter between the employers and employees alone but a vital concern of the community which may be expressed in measures for the protection of

its larger interests."

A need was felt that where there are multiple unions seeking to represent workmen in an undertaking or in an industry, a concept of recognised, union must be developed. Standing Labour Committee of the Union of India at its 29th Session held in July 1970 addressed itself to the question of recognition of trade union by the employer. In fact even amongst trade union leaders there was near unanimity that the concept of recognised unions the sole bargaining agent must be developed in the larger interest of industrial peace and harmony. National Commission on Labour chaired by late Shri P.B. Gajendragadkar, former Chief Justice of India, after unanimously and wholeheartedly expressing itself in favour of the concept of recognised union and it being clothed with powers of sole bargaining agent with exclusive right to represent workmen, addressed itself only to the question of the method of ascertaining which amongst various rival unions must be accorded the status of a recognised union. Planting itself firmly in favour of democratic principle, it was agreed that the Union Which represents the largest number of workmen working in the undertaking must acquire the status as that would be in tune with the concept of industrial democracy. The fissures arose as to the method of finding out the membership. The Commission had before it two alternative suggestions for ascertaining the membership (i) verification of membership by registers and (ii) by secret ballot. As there was a sharp cleavage of opinion, the Commission left the question of adopting one or the other method in a given case to the proposed Indus-

trial Relations Commission which was recommended to be set up if the recommendations of the Commission were to be accepted. What is of importance to us is that every one was agreed that where there are multiple unions in an industrial undertaking or an industry, the union having the largest membership of the workmen must be clothed with the status of recognised union and consequently as the sole bargaining agent. The underlining assumption was that the recognised union represent all the workmen in the industrial undertaking or in the industry.

It may be mentioned in passing that the Bombay Industrial Relations Act had incorporated provisions for conferring the status of a recognised union and despite strident criticism of the method of ascertaining membership, the system seems to be working well. The Act went further and developed the concept of approved union on which powers were conferred for making reference of an industrial dispute to the relevant authority for adjudication-a power which under the Central Act is the close preserve of the appropriate Government. The oft-repeated grievance voiced by those opposed to the concept of recognised union entitled to represent all workmen was that such a status will concentrate so much power in the hands of the recognised union that it can work to the disadvantage of those not becoming its members as also those opposed to the political or social philosophy of the recognised union and would therefore keep away from it. The chink in the armous appeared when it was found that a workman who is questioning his termination of service, largely a personal punishment and therefore provides a personal cause of action but who was not a member of the recognised union was sought to be thrown out of the court by the representative union appearing to get the petition dismissed on the specious plea that it alone is entitled to represent workmen. The Legislature immediately became aware of the pitfall and remedied the situation by introducing Sec. 2 (A) in the Industrial Disputes Act, 1947 which provides that a workman, who is

dismissed, discharged or removed from service or whose service is otherwise terminated can espouse his own cause without the help of a recognised union and yet such a dispute would be an industrial dispute. This very protection is retained in the impugned provision Sec. 20 (2) (b). Status to be the sole bargaining agent as a recognised union is a hard won battle and need not be permitted to be frittered away by a sentimental approach that where trade union movement has idelogical overtones, such a provision would compel workmen either to become members of a union, whose socio-political philosophy is not in tune with his own or suffer isolation as such workman can not forge a to 1 of A trade union or even if they form one, the employer can ignore it with impunity. Is there any substance either in the contention or the apprehension voiced ? The matter cannot be viewed from the perspective of same ideloguis but has to be examined in the large perspective of public interest of peace and harmony in the industry, healthy industrial relations and large national interest which eschews strikes, lock-outs, conflict and confrontation.

Having briefly referred the history of the development of trade unions, let us turn to the challenge in this case. Mr. Daniel Latifi contended that Sec 20 unquestionably denies to the workmen who are not members of a recognised union the fundamental freedom guaranteed under Art. 19 (1)

(a) and (c). It was urged that the provisions of the Act inheres the pernicious tendency to compel the workmen to join the union which has acquired the status of a recognised union even if followed a socio-economic or socio-political philosophy contrary to the philosophy of non-members and that such compulsion denies the free dom to form association. It was also submitted that the right to form association would be an empty formality if the association is not in a position to effectively participate in any proceeding concerning the workmen of an industrial undertaking, some of whom have formed a separate trade union. It was stated that either all the unions of the workmen should be treated on par or at any rate in order to safe guard the members of non-recognised union against the imposition of the will of recognised union, they must be free not to be bound by the action of the recognised-union. It was stated that Sec. :0 (2) of the 1971 Act denies all these safeguards and therefore it must be declared unconstitutional.

Before the introduction of Sec. 2-A in the Industrial Disputes Act, 1947 the court leaned in favour of the view that individual dispute cannot be comprehended in the expression 'industrial dispute' as defined in the Industrial Disputes Act, 1947. Any dispute not espoused by the union for the general benefit of all workmen or a sizeable segment of them would not be comprehended in the expression 'industrial dispute' was the courts' view. Often an invidious situation arose out of this legal conundrum. An individual workman if punished by the employer and if he was not a member of the recognised union, the latter was very reluctant to espouse the cause of such stray workman and the individual workman was without a remedy. Cases came to light where the recognised union by devious means compelled the workmen to be its member before it would espouse their causes. The trade union tyranny was taken note of by the legis-

lature and Sec. 2-A was introduced in the Industrial Disputes Act, 1947 by which it was made distinctly clear that the discharge, dismissal retrenchment or termination of service of the individual workman would be an industrial dispute notwithstanding that no other workman or any union of workman is a party to the dispute. Sec. 20, sub-sec. 2 while conferring exclusive right on the

recognised union to represent workmen in any proceeding under the Industrial Disputes Act, 1947 simultaneously denying the right to be represented by any individual workman has taken care to retain the exception as enacted in Sec. 2 A. This legal position is reiterated in Sec. 20 (2) (b). Therefore while interpreting Sec. 20 (2) (b) it must be kept in view that an individual workman, who has his individual dispute with the employer arising out of his dismissal, discharge, retrenchment or termination of service will not suffer any disadvantage if any recognised union would not espouse his case and he will be able to pursue his remedy under the Industrial Disputes Act, 1947. Once this protection is assured, let us see whether the status to represent workmen conferred on a recognised union to the exclusion of any individual workman or one or two workmen and who are not members of the recognised union would deny to such workmen the fundamental freedom guaranteed under Art. 19 (1) (a) and 19 (1) (c) of the Constitution.

We fail to see how the restriction on the right to appear and participate in a proceeding under the Industrial Disputes Act, 1947 to a workman who is not prepared to be represented by the recognised union ill respect of a dispute not personal to him alone such as termination of his service denies him the freedom of` speech and expression or to form an association. Conferring the status of recognised union on the union satisfying certain pre-requisites which the other union is not in a position to satisfy does not deny the right to form association. in fact the appellant union has been registered under the Trade Unions Act and the members have formed their association without let or hindrance by anyone. Not only that the appellant union can communicate with the employer, it is not correct to say that the disinclination of the workmen to join the recognised union violates the fundamental freedom to form association. It is equally not correct to say that recognition by an employer is implicit in the fundamental freedom to form an association. Forming an association is entirely independent and different from its recognition. Recognition of a union confers rights, duties and obligations. Nonconferring of such rights, duties and obligations on a union other than the recognised union does not put it on an inferior position nor the charge of discrimination can be entertained. The members of a non-recognised association can fully enjoy their fundamental freedom A of speech and expression as also to form the association.

The Legislature has in fact taken note of the existing phenomenon in trade unions where there would be unions claiming to represent workman in an undertaking or industry other than recognised union. Sec. 22 of 1971 Act confers some specific rights on such non- recognised unions, on such being the right to meet and discuss with the employer the grievances of individual workman The Legislature has made a clear distinction between individual grievance of a workman and an individual dispute affecting all or a large number of workmen. In the case of even an unrecognised union, it enjoys the statutory right to appear and discuss the grievance of individual workmen with employer. It also enjoys the statutory right to appear and participate in a domestic or departmental enquiry in which its member is involved. This is statutory recognition of an unrecognised union. The exclusion is partial and the embargo on such unrecognised union or individual workman to represent workman is in the large interest of industry, public interest and national interest. Such a provision could not be said to be violative of fundamental freedom guaranteed under Art. 19 (1) (a) or 19 (1) (c) of the Constitution Having examined the contention on principle, we may now turn to precedents brought to our notice.

In Raja Kulkarni and Ors. v. State of Bombay(1), one of the contentious canvassed before the Constitution Bench was that Sec. 13 of the Bombay Industrial Relations Act, 1946 as it then stood provided that a union can be registered as a representative union for an industry in a local area if it has for the whole of the period of three months next preceding the date of its application, a membership of not less than 15% of the total number of employees employed in any F industry in any local area. If the union does not satisfy that condition and has a membership of not less than 5%, it could be registered as a qualified union Rashtriya Mill Mazdoor Sangh was registered as a representative union while the Mill Mazdoor Sabha was registered as a qualified union. It was contended on behalf to Mill Mazdoor Sabha of which the appellants before this Court were the office-bearers that the provisions that conferred an exclusive right only on the representative union to represent workmen was violative of fundamental freedoms guaranted to the members of Mill Mazdoor Sabha .

(1) [1954] SCR 384.

or any other workman who is not a member of the representative union under Art. 19 (1) (a) and (c) and was also violative of Art. 14 inasmuch as the two representatives of workmen were denied equality before law or the equal protection of laws. The Constitution Bench repelled the contention observing that such a provision does no t deny either the fundamental freedom of speech and expression or the right to form association. The Court said that it is always open to the workmen who are not members of the representative union to form their own association or union and to claim higher percentage of membership so as to dethrone the representative union and take its place. This decision should have concluded the matter. Mr. Latifi however, urged that this decision is of no assistance because it was rendered at a time when sub-sec. (2) Of Sec. 114 of the Bombay Industrial Relations Act, 1946 provided that where the representative union is a party to a registered agreement or settlement, submission or award the Provincial Government may after giving the parties affected an opportunity of being hard by notification in the Official Gazette direct that such agreement, settlement, submission or award shall be binding union such other employers and employees in such industry or occupation in that local areas as may be specified in the notification. There was a proviso to sub-sec. (2) which provided that before giving a direction under sub-sec. (2) the Provincial Government may in such cases as it deems fit, make a reference to the Industrial Court for its opinion. It was urged that workmen in an industry or in an undertaking, who are not members of the representative union would not be bound by a settlement, sub mission or award to which representative union alone is a party, unless the Provincial Government took action under sub-sec. (2) of Sec. 114 and there was a further safeguard inasmuch as before making such a settlement, submission or award binding on all workmen, a reference to the Industrial Court for its opinion could be made. It was urged that these safeguards are missing inasmuch as Sec. 20 (2) would make a settlement or award to which a representative union is a party binding on all the workmen in to undertaking or the industry as the case may be and therefore the aforementioned decision can be distinguished. We see no merit in this submission. This Court did not uphold the vires of the relevant provisions on the ground that there were safeguards for non-members. The provision was held intra-vires on the broad features of the pro visions that they neither deny the fundamental freedom guaranteed under Art. 19 (1) (a) nor 19 (1) (c).

In Ram Prasad Vishwakarma v. The Chairman, Industrial Tribu-

nal(1), an industrial dispute arising out of the termination of service A of the appellant in that case was espoused by the union and which was referred for adjudication to the Tribunal. When the matter was before the Tribunal, the appellant workman made an application that he may be permitted to represent his case by his two colleagues and at any rate not by the Secretary of the union The Tribunal rejected the application and after an unsuccessful writ petition the matter came to this Court. It was contended that even though the case of the appellant was espoused by the union, he was entitled to a separate representation. Repelling the contention, this Court held that any individual grievance is not comprehended in the expression 'industrial dispute' as defined and the dispute would only acquire the character of an industrial dispute if espoused by the union and therefore, the workman would not be entitled to a separate representation. The decision turns on the interpretation of expression 'industrial dispute and before the introduction of Sec. 2-A in the Industrial Disputes act, 1947. It does not shed any light on the issue under discussion.

In Girja Shankar Kashi Ram v. Gujarat Spinning and Weaving Mills Ltd.,(2) the right of the representative union to appear in a proceeding under the Bombay Industrial Relations Act to the execusion of the workmen likely to be adversely affected by the decision of the court came up for consideration. The representative union and the employer entered into a settlement for grant of bonus to the workmen and in consideration thereof the representative union agreed not to press for any compensation for the workmen discharged by the employer. Subsequently 376 persons, who had been in the employment of the company prior- to its closure gave notice under Sec. 42 (1) of the Bombay Industrial Relations Act and claimed compensation for the period of closure. As the parties failed to arrive at a settlement, an application under Sec. 42 (4) was made to the Labour Court. During the pendency of this application, the representative union made appearance before the Labour Court and contended that the application should be dismissed in view of the compromise which had been arrived at before the Labour Appellate Tribunal. The Labour Court accepted the contention and dismissed the application. In the appeal to the Industrial Court, it was contended that considering that no individual workman could be permitted to appear in any proceeding where representative union appears as representative of employees, yet if the action of the representative union was malafide, (1) [1961] 3 S.C.R. 196.

(2) [1962] 2 Supp. S.C.R. 890.

the Labour Court should not have permitted the representative union to appear and thereby deny the adversely affected workmen to be represented and then non- suited at the instance of the representative union The Industrial Court dismissed the appeal. A writ petition to the High Court failed and thereafter the matter was brought to this Court. After an exhaustive review of the various provisions of the Bombay Industrial Relations Act, this Court held that bona fides or the mala fides of the representative union can have nothing to do with the ban imposed upon appearance of any one other than a representative union in any proceeding under the Bombay Industrial Relations Act The decision goes so far as to suggest that even where the action of The representative union may be such as would appear to be disadvantageous to some workmen yet its action has to be judged in the light of the fact that it does not tend to cater to the needs of a section of the workmen but the

workmen represented by it as a whole. Incidentally it must be pointed out that the question of vires was not raised in this case.

The view taken in Girja Shankar's case was affirmed and approved in Santuram Khudai v. Kimatrai Printers & Processors (p) Ltd.& Ors (1) wherein this Court observed that the legislature has clothed the representative union with exclusive right to appear or act behalf of the employees in any proceeding under the Bombay Industrial Relations Act and has simultaneously deprived the individual employee or workman of the right to appear or act in any proceeding under the Act where representative union enters appearance or acts as representative union of employees. The question of vires was not raised.

Prima facie on the arguments urged and decisions examined, we are satisfied that there is no substance in the challenge that Sec. 20 (2) (b) upon its true construction violates Art. 19 (1) (a) and (c) of the Constitution. We must however make it clear that we may keep this question of constitutionality open for a more detailed argument and in- depth examination because in this case at the fag end of arguments, the parties more or less buried the hatchet and there was the spirit of give and take to which we would presently advert.

The change in the law made by the introduction of Sec. 2-A in the Industrial Disputes Act, 1947 has been taken note of by the State Legislature in introducing a safeguard in Sec. 20 (2) (b) in that (1) [1978] 2 S.C.R. 387.

an individual workman who has been either dismissed, discharged, A removed, retrenched or whose services has been terminated in any manner or who is suspended would be on his own entitled to raise an industrial dispute concerning the termination of his service in any manner and he would be able to pursue his remedy in a proceeding arising out of the legality or validity of the order of termination of service. The representative union would not be able to supplant the workman by its appearance and act to the detriment of the workman Cases are not unknown where an individual workman whose services has been terminated and who wanted his cause to be espoused by the union was not only ignored by the union but occasionally the power of representative union to exclude the workman from the proceeding was exercised to the disadvantage of the workman by appearing in the proceeding and after excluding the workman to so get the proceedings disposed of as to be wholly disadvantageous to the workman and the workman was left without a remedy Care has been taken to deny such steam rolling power to the representative union and this position is further strengthened by the provisions contained in Sec. 22 of the 1971 Act which confers certain rights on unrecognised unions more especially right to meet and discuss with the employer the grievances of an individual member relating to his discharge, removal, retrenchment, termination of service or suspension as also to appear on behalf of its members employed in the undertaking in any domestic or departmental enquiry held by the employer. This is certainly an advance on the similar provisions of the Bombay Industrial Relations Act.

Sec. 20 (2) (b) is more or less in pari materia with the provisions of the Bombay Industrial Relations Act, 1946, The provisions relating to the status, character, powers and obligations of a representative union as envisaged in the Bombay Industrial Relations Act, 1946 have been extended to cover

industries not governed by that Act but by the Industrial Disputes Act, 1947. Where a representative union acts in exercise of the powers conferred by Sec. 20 (2) it is obligatory upon it to act in a manner as not discriminate between its members and other workmen of the undertaking who are not its members. However when a settlement is reached in a proceeding under the Industrial Disputes act in which a representation union has appeared, the same is to he binding on all the workman of the undertaking. This would mean that neither the representative union nor the employer can discriminate between members of the representative union and other workmen who are not members. Both the benefits, advantages, disadvantages or liabilities arising out of a settlement in any proceeding under the Industrial Disputes Act to which a representative union is a party shall be equally applicable to each workman in the undertaking. There shall not be the slightest trace of discrimination between members and non-members both as regards the advantages and also as regards the obligations and liabilities. Any other view of Sec. 20 (2) (b) would render it unconstitutional and invalid as being violative of Art 14. Equal treatment of members and non-members is implicit in the section and by its interpretation we only make it explicit.

A serious grievance was vioiced by Mr. Latifi that by the impugned Clause 17 of the Settlement, the non-members are subjected to compulsory exaction for the benefit of the representative union with whose philosophy the non-members are not in agreement and they are made to pay to advance a rival philosophy. It was urged that this is some-thing like a tax for the propogation of a philosophy which the members of the appellant union consider harmful or disadvantageous to the workmen in general. Clause 17 of the settlement is already extracted. After a strike, a settlement was arrived at between the first respondent employer and the second respondent representative union, Clause 17 of which mandated the employer to deduct 15% of the gross arrears payable under the settlement to each employee as contribution to the union fund. It is well-known that no deduction could be made from the wages and salary payable to a workman governed by the Payment of Wages Act unless authorised by that Act. A settlement arrived at on consent of parties can however permit a deduction as it is the outcome of understanding between the parties even though such deduction may not be authorised or legally permissible under the Payment of Wages Act.

The contention is that where members who form a union pay the membership fee and receive the benefits or advantages of being members of the union yet, persons who are not members of the union without their consent were forced to part with their earnings as if paying a tax which is compulsory. If the same is held permissible under Sec. 20 (2) (b), either the section will be constitutionally invalid or that part of the settlement being severable would be illegal and invalid qua non-members On the face of it, the contention appears to be attractive but anyone who, has some understanding and appreciation of the working of a trade union would be able to fully appreciate the provision like the one under discussion. Though unfortunate, it is notorious that in some cases resorting to strike has by itself become an industry and the unions invest in the strike by sustaining morale of the workmen when during the strike the employer would deny wages. In a case of genuine grievances and forced strike, the workmen unable to stand up for want of wherewithal or cushions, the trade union may help them sustain their vigour by some monetary assistance during the period of strike. When the strike ends in a settlement or where even without a strike. benefits under a settlement are made retro-active and the arrears are required to be paid under the

settlement, naturally the union in order to vigorously carry on its activities free from financial constraints would expect the workmen for whose benefit the dispute was raised which on settlement may bring in monetary benefits to reimburse itself. As the members and non-members are entitled to equal treatment under the settlement both can be asked as a condition of settlement to part with a portion of the benefits towards union activities. Such deductions can neither be said to be compulsory exaction nor a tax. Therefore such a provision of deduction at a certain rate as agreed between the parties for payment to the union, the same being with the consent and as part of overall settlement would neither be improper nor impermissible nor illegal.

Mr. Daniel Latifi, however, urged that in case of non-members, the deduction would be without their consent, and therefore has the nefarious tendency of making non- members pay for the benefit of a rival union. Expanding the submission, he urged that the trade-union movement has more or less developed as an appendage of the political parties and therefore each union is influenced by its own parent identity and therefore the rival union would certainly he expected to have a rival parent identity and yet the rival union not having acquired, the status of a representative union would be compelled by the settlement to contribute to the coffers of the representative union funds, which would expended to propogate its own philosophy to the detriment of the rival union. It was urged that this amounts to compelling an individual to contribute against his will for the propogation of the cult of an opponent. Maybe there may be some harsh truth in the submission. It can not however be examined from a setarian point of view. The submission has to be examined in the proper perspective of the trade union movement. Shorn of embellishment such a provision would show that benefits and liabilities both must be shared equally. If under a settlement with the representative union some benefits accrue to the workmen, and upon a true interpretation of sec. 20 (2) (b), it is held all encompassing and therefore binding on all workmen and the employer alike, all the benefits would be available to the workmen who are not members of the representative union and who may have formed a rival union. If these workmen could not be denied the benefits they would enjoy an unfair advantage if from the package deal covered by the settlement, they draw benefits and abjure liabilities. Heads I win and tails you lose could hardly be a fair and just approach in settling inter-union disputes. Therefore a clause like Clause 17 of the Settlement has to be understood in the context of strengthening the trade union movement and to free it from financial constraints. Workmen who are members of a union may pay fee for membership and enjoy the advantage of membership but if by the action of the representative union all workmen acquire benefit or monetary advantage, the members and non-members alike can be made to make common sacrifice in the larger interest of trade union movement and to strengthen the trade union which by its activities acquired the benefits for all workmen. Payment to trade union fund in these circumstances can be styled as quid pro quo for benefits acquired. Therefore, we see nothing objectionable in Clause 17 of the Settlement which directs the employer to deduct 15% of the gross arrears payable to each employee under the settlement as contribution to the trade-union funds. Thereby the workman is not subscribing to the philosophy of rival union but he is merely paying the price of the advantage obtained. Another view would make the union members suffer and the non-members benefit, a situation which must at all costs be avoided. Therefore clause 17 of the Settlement would not be invalid despite the lack of consent of the workmen who are members of the appellant union. The settlement having been made by the representative union its right to represent all workman would imply the consent of the members of the rival union. This is the legal consequence of the right of the

representative union to represent all workmen and the binding effect of its action.

Mrs. Radha De 'souza who also appeared along-with Mr. Daniel Latifi for the appellant-union urged that the refusal of the representative union to admit all workmen of the first respondent industrial undertaking had forced those denied membership to form the appellant union. President of the second respondent representative union was present in the Court and after consulting him Mr. M.K. Ramamurthy, learned counsel stated in the Court that all workmen of the first respondent industrial undertaking are entitled and are, eligible to be the members of the representative union and they will be admitted without let or hindrance on a proper application being made as members of the second respondent representative union. Mrs. Radha De'souza stated that all the members of the appellant-union would as early as possible make the necessary application and the President of the second respondent representative union stated that all of them will be admitted without any further scrutiny. On such membership being granted the appellant-union would stand dissolved. This would certainly go a long way to strengthen the trade union movement.

Having considered all the aspects of the matter and keeping in view the interpretation we have placed on Sec. 20 (2) (b) and Clause 17 of the settlement dated June 18, 1984 this appeal must fail and is dismissed with no order as to costs.

Whatever benefits are yet to be paid to the members of the appellant-union under the aforementioned settlement shall be paid within 2 months from today.

M.L.A. Appeal dismissed.