(1959) 02 BOM CK 0015

Bombay High Court

Case No: O.C.J. Letters Patent Appeal No. 2 of 1959

B.E.S.T. Workers'' Union		APPELLANT
	Vs	
State of Bombay and Others		RESPONDENT

Date of Decision: Feb. 5, 1959

Acts Referred:

- Bombay Industrial Relations Act, 1946 - Section 13(1), 14
- Constitution of India, 1950 - Article 226

Citation: (1959) 61 BOMLR 967 : (1959) 2 LLJ 493

Hon'ble Judges: J.R. Mudholkar, J; D.V. Patel, J

Bench: Division Bench

Judgement

Mudholkar, J.
This is an appeal under the Letters Patent against the judgment of Mr. Justice Shelat dismissing summarily the appellant''s petition under Art. 226 of the Constitution.

2. The facts which have led up to this appeal are briefly as follows. The petitioner is a registered union of workers of the B.E.S.T. undertaking, and was registered as a representative union by the Registrar of Unions under S. 13(1) of the Bombay Industrial Relations Act, 1946. The union was for the local area of the city of Bombay. That area was altered by a notification of the Government dated 16 April, 1958. Now, by reason of the alteration of the local area, it became necessary for the appellant union to make a fresh application for registration as a representative union under S. 13(1) of the Act. It made such an application on 30 October 1958.

3. Prior to this application, respondent 3, which is also a trade union of employees employed in the same industry as the members of the appellant union, had also made an application to the Registrar under S. 13(1) of the Act for being registered as a representative union of the workers engaged in that industry. This application was made on 30 August, 1958. The Registrar commenced to inquire into this application. After the appellant union filed its application, its representatives approached the

Registrar for inquiring into both the applications, that is, the appellant''s application and that of respondent 3 side by side with one another. Some discussions took place between the representatives of the appellant union and the Registrar, and some correspondence also passed between them. Eventually, the appellant realized that the Registrar was disinclined to deal with its application till the application of respondent 3 was disposed of, and it therefore made a petition to this Court under Art. 226 of the Constitution for issue of an appropriate writ to the Registrar directing him to hear both the applications together, and also forbidding him from registering respondent 3 under S. 14 of the Act before dealing with the appellant''s application.

4. Along with the writ petition, the appellant also made an application for issue of an interim injunction restraining the Registrar from proceeding further with the inquiry into the application made by respondent 3. Mr. Justice Shelat, before whom the matter came, did not issue a rule in the writ petition, but merely granted an ad interim injunction to the appellant and issued a rule returnable within two days to the Registrar to show cause why the injunction should not be granted. At the hearing of this matter, not only the Registrar, who is respondent 2 before us, but also respondent 3 appeared and opposed the grant of an interim injunction. After hearing them, Mr. Justice Shelat not only dissolved the ad interim injunction granted by him, but dismissed the petition of the appellant under Art. 226 of the Constitution.

5. It was contended before us that the ground on which Mr. Justice Shelat dismissed the appellant''s petition was that the appellant was guilty of laches, and there was undue delay in making the petition under Art. 226. It was also urged that where there is a delay in making a petition, the Court has discretion in the matter of condoning the delay, and where the Court has exercised the discretion in a particular way, it would not be open to the appellate Court to interfere with the exercise of its discretion.

6. What we have got to ascertain at the outset is, whether there was at all any delay on the part of the appellant in making its petition to this Court. It was pointed out to us that the Registrar informed the appellant''s representatives as early as on 29 November, 1958, that he proposed to proceed with the hearing and disposed of the application of respondent 3 and that he would take into consideration the appellant''s application only after he had disposed of the application made by respondent 3. On the basis of this fact, it is contended that the appellant should have presented its petition under Art. 226 within a reasonable time from that date. But instead of doing so, it waited till 19 January, 1959 for presenting the petition. It is also pointed out to us that in the meanwhile the Registrar had made considerable progress in the inquiry into the application made by respondent 3 and that if it is ordered that both the applications, that is, that of respondent 3 and of the appellant, should be heard together, a good deal of work which has been done by

the Registrar would be thrown away. To this the answer of the appellant is that it does not want to question anything that the Registrar had done so far in the matter of the application of respondent 3. What it wants is that an inquiry of the kind, which the Registrar is making with respect to the qualification of respondent 3 for being registered as a representative union, should also be made with respect to it, and that this inquiry should not be postponed till final orders are passed upon the application of respondent 3. In this connexion, Mr. Gokhale, who appears for the appellant, has referred us to the scheme of the Act, and in particular to Ss. 13 and 14 thereof. Section 13(1) reads thus :

"Any union which has for the whole of the period of three calendar months immediately preceding the calendar month in which it so applies under this section a membership of not less than fifteen per cent of the total number of employees employed in any industry in any local area may apply in the prescribed form to the Registrar for registration as a representative union for such industry in such local area."

7. Then follow Sub-secs. (2) and (3) with which we are not concerned. The provisions of S. 14 run as follows :-

"On receipt of an application from a union for registration under S. 13 and on payment of the fee prescribed, the Registrar shall, if after holding such inquiry as he deems fit he comes to the conclusion that the conditions requisite for registration specified in the said section are satisfied and that the union is not otherwise disqualified for registration, enter the name of the union in the appropriate register maintained under S. 12 and issue a certificate of registration in such form as may be prescribed :

Provided :

Firstly, that in any local area there shall not at any time be more than one registered union in respect of the same industry ....

Thirdly, that where two or more unions fulfilling the conditions necessary for registration apply for registration in respect of the same industry in any local area, subject to the provisions of the proviso 2, the union having the largest membership of employees employed in the industry shall be registered :

Fourthly, that the Registrar shall not register any union if he is satisfied that the application for its registration is not made bona fide in the interest of the employees but is made in the interest of the employers to the prejudice of the interest of the employees.

Fifthly, that the Registrar shall not register any union if at any time, within six months immediately preceding the date of the application for registration or thereafter the union has instigated, aided or assisted the commencement or continuation of a strike or stoppage which has been held or declared to be illegal

...."

8. Now, Mr. Gokhale pointed out that what the Registrar has to do in the first instance is to make a preliminary inquiry for satisfying himself whether the union, which has made an application before him for being registered, has membership of not less than fifteen per cent of the total number of employees employed in the particular industry during the period specified in Sub-section (1) of S. 13. It is only after he has made such inquiry and is satisfied that the applying union fulfils the conditions specified in this section that the Registrar need consider further the question of registering the union. Mr. Gokhale conceded that the appellant will have no locus standi thereafter in so far as such a preliminary inquiry is concerned. Similarly, according to him, respondent 3 will not be concerned with an inquiry into the qualifications of the appellant union for being registered as a representative union. Then Mr. Gokhale referred us to the provisions of the proviso 3 to S. 14, and said that where there are two applications before the Registrar from unions for being registered as representative unions, the questions which the Registrar has to decide is which of the two unions is entitled to get registered. Now, under the proviso 3, it is the union having the largest membership of employees employed in the particular industry which is entitled to be registered. Therefore, according to him, when the stage of deciding this question is reached that all the unions which have applied for being registered would have an interest in the matter, which the Registrar has to decide, and that, therefore, from that stage onwards the applications of all the applying unions must be heard together. Since that stage has not arrived yet, Mr. Gokhale contends that the lapse of time between 29 November, 1958, when the Registrar informed a representative of the appellant union about what he proposed to do, and 19 January, 1959, on which day the appellants preferred their petition, cannot be construed as an undue delay in the matter of making the application. He emphasizes the point that the appellant union had no interest in the inquiry which has gone on so far before the Registrar with respect to the matter referred to in S. 13(1) of the Act, and that merely because the appellant union stood by and allowed that inquiry to go on without challenging its validity or propriety in this Court cannot be deemed to be laches on the Part of the appellant union. In our opinion, Mr. Gokhale''s contentions is correct, and must be upheld. There is no doubt that the appellant union was not directly interested in the inquiry under S. 13(1), which was made by the Registrar in respect of the application of respondent 3. What the appellant union is interested in doing is to prevent respondent 3 union from being registered as a representative union, and so long as the appellant approached this Court before the Registrar could or did register it, there was no question of delay whatsoever on the part of the appellant. Now, here, as already stated, the Registrar is merely conducting the enquiry into the application of respondent 3. We are informed by the counsel appearing for the Registrar and for the union in this case that the inquiry is almost complete. That may be so, but the fact remains that the Registrar has not registered the union yet. Indeed, he was

restrained from doing so by an order of Shelat, J., in the first instance, and then by an order of a Division Bench of this Court after the appeal was preferred. In our opinion, therefore, there was no question whatsoever of delay in making the petition out of which this appeal arises, and consequently, the question for exercise of discretion in condoning delay never arose. The learned single Judge has not stated any reasons for dismissing the writ petition; but if we assume that the main reason for dismissing it was as stated on behalf of the respondent, we must, with respect, hold that view was not correct.

9. The next point which we have to consider is whether the Registrar would be entitled to follow the procedure indicated by him or whether he must follow some other procedure. Now, it is plain from the affidavit of the Registrar and from the argument which were advanced on his behalf by Mr. Joshi that what the Registrar proposes to do is to decide not only the preliminary point which is required to be decided, but also other points. If he holds in favour of respondent 3 on the preliminary point, and then proceeds to register the union, Mr. Gokhale contends that this would be illegal, because at the moment there are in point of fact two applications for registration pending before the Registrar, and that, therefore, as required by the proviso 3 to S. 4 he must consider which of the two applications he must grant, that is to say, which of the two rival unions is entitled to be registered as representative union. It seems to us that the language used by the legislature in the proviso 3 to S. 14 is quite clear and it does require the Registrar to decide which of the two applying unions has the larger membership of employees employed in the industry concerned. It will not be possible for him to perform this duty if, even though two applications are pending before him, he chooses to decide only one, and after holding that the union which has made the application fulfils the requirements of S. 13(1), registers that union. If he does that, then the application of any other union pending before him at that time would not survive by virtue of the provisions of the proviso 1 to S. 14. It would clearly follow from this that where more than one application for registration is pending before the Registrar, he must hold his hands and refrain from registering any union, until and unless he has discharged his duties under the proviso 3 to S. 14.

10. It was contended before us by Mr. Joshi that the Registrar need only consider those applications for registration which were made to him in the same calendar month, and that where one application was made in one month and the other in a subsequent calendar month the Registrar was not bound to consider the latter, till he disposed of the former. He bases his argument on the opening words of Sub-section (1) of S. 13, and those words are :

"Any union which has for the whole of the period of three calendar months immediately preceding the calendar month in which it so applies under this section," etc.

11. He says that the "three calendar months" must be the same with respect to each of the applying unions, and this can happen only where the applications are made by those unions in the same calendar month. He further points out that where the Registrar has to decide as to which of the applying unions has the largest number of employees in its register, he must make the comparison with reference to the same point of time or period. Such a comparison will be possible only when the figures before him relate to the same period of three calendar months with respect to the different applying unions. Where the union has applied in one month, and another in a subsequent month, the period of three calendar months with respect to these two unions would not coincide, but would be different and therefore, according to Mr. Joshi, it will not be possible for him to make the kind of comparison which is referred to in the proviso 3 to S. 14. Since such a comparison becomes impossible with respect to applications made in different calendar months, M. Joshi argued that the provisions of the proviso 3 to S. 14 would apply only when the applications pending before the Registrar for registration were made in the same calendar month.

12. In our opinion, there is no substance in this argument. The inquiry which is contemplated by Sub-section (1) of S. 13 is in the nature of a preliminary inquiry, and the object of making that inquiry is to find out whether the union, which has made the application to it for being registered as a representative union, has on its register a certain minimum number of employees working in the particular industry. No doubt, if a union, which has made the application to the Registrar, satisfies the requirements of Sub-section (1) of S. 13, it will, in the absence of any disqualification and in the absence of any application for being registered by another union, be entitled to be registered as a representative union straightaway. But it does not mean that the point of time referred to in Sub-section (1) of S. 13 is the one recognized by the Act as relevant for determining the comparative strength between rival unions, where applications are made for registration by rival unions. In such cases, the relevant time would be the time when an occasion arises for exercising the powers and performing the duties contained and laid down in the proviso 3 to S. 14. The point of time with reference to which the membership of rival unions applying for registration is to be considered cannot be the date of the application or the month of the application made by them, but it must necessarily be the occasion when the claims of the other unions fall to be considered.

13. Mr. Joshi has referred us to Sub-section (3) of S. 16 and stated that the provisions of this sub-section would show that the point of time with reference to which the strength of rival unions should be ascertained for the purpose of registration is the date of the application for registration. Section 16 deals with registration of another union in place of existing registered union. Sub-section (3) thereof reads as follows :-

"If on the expiry of the period of notice under Sub-section (1), after holding such inquiry as he deems fit, the Registrar comes to the conclusion that the applicant

union complied with the conditions necessary for registration specified in S. 13, and that its membership was during the whole period of the three calendar months immediately preceding the calendar month in which it made the application under this section larger than the membership of the registered union, he shall subject to the provisions of S. 14 register the applicant union in place of the registered union."

14. In our opinion, this provision, instead of assisting Mr. Joshi, assists the appellant union. It is evident from this provision that where the legislature though it fit to require the membership to be determined as it stood on the date of the application for registration, it has done so in clear terms. It was, indeed necessary to enact such a provision in Sub-section (3), because under this provision a union making an application for being registered in place of an existing union, makes certain claims based on its strength. For considering such a claim, it is but appropriate that its strength as it obtained on the date on which it lodged that claim should be considered in preference to its strength on any other occasion.

15. On behalf of respondent 3, Mr. Buch relied upon the provisions of S. 31. That section reads thus :

"Notwithstanding anything contained in this Act, if there is any alteration in any local areas or areas notified for the purposes of this Act; -

(a) a registered or representative union entitled under this Act to appear or act as a representative of employees in an industry immediately before the alteration in the local area or areas concerned, or

(b) where more than one registered or representative union are entitled to appear or act as representative of employees in an industry under this section, the union having the largest membership of employees employed in the industry, whether by agreement of the other registered or representative unions or as determined by the Registrar after such inquiry as he thinks fit,

shall be entitled to appear or act for the altered local area or areas, as the case may be, for a period of twelve months from the date on which such alteration is effected or if an application under S. 13 is made within such period by such union or any other union in the altered local area or areas, until the disposal of such application by the Registrar."

16. Now, Mr. Buch particularly relied upon the concluding words of the section "until the disposal of such application by the Registrar," and said that this provision clearly contemplates determination of one application only under S. 31 at a time by the Registrar. For one thing, reading the section as a whole the word "application" must be deemed so include several applications, where more than one application is made, because the ordinary rule of construction is that unless there is something repugnant to the context, a singular would include the plural. Then, it is difficult to understand what relation this provision has to a matter which arises only under S.

13. Section 13, as we have seen, relates to applications for registration of unions. Section 31 deals with the question of the right of representation of a union, which was registered as a representative union for one local area in respect of the same industry in an altered local area. The legislature has in this section, apart from preserving the right of a union to function as a representative union, also provided for two points of time upto either of which such a right could be exercised. The first point of time is twelve months from the date of the alteration of the local area. The other point of time is the date of disposal of an application made under S. 13 by the same or any other union for registration. This section does not even purport to deal with the procedure to be followed in dealing with an application made under S. 13, and indeed there was no question of dealing therein with the procedure in respect of such applications, because it is already dealt with in S. 13. We cannot, therefore accept the argument of Mr. Buch.

17. Finally, it was said that upon the view which we take as to the point of time with reference to which the relative strength is to be determined, a practical difficulty will be created, and the Registrar would not be able to dispose of the applications for registration expeditiously. It may be that a certain amount of delay would be caused, because the Registrar may have to examine the claims of several unions. But that is not a ground or reason for refusing to construe the provisions of the Act according to the language used by the legislature. It is not as if it will be impossible for the Registrar to perform his duties. Where a construction placed on a provision were to result in such an impossibility, then, of course, that construction would not be proper, and the Court would be precluded from putting such construction. Merely because the construction would create difficulties, that construction, if it is otherwise justifiable, cannot be rejected.

18. We accordingly hold that the Registrar is bound to consider the application of the appellant before he makes any final orders disposing of the application made by respondent 3, that is to say, before he decides to register respondent 3 union.

19. Before concluding, we would like to advert to one more objection raised by the Registrar in his affidavit. It is this, that the appellant has other remedies open, and, therefore, it is not competent to it to make an application to this Court under Art. 226 of the Constitution. These other remedies are :

(a) appeal to the industrial court under S. 20, and

(b) an application to the Registrar under S. 16.

20. Now, no question of an appeal to the industrial court arises, because only a party to the proceeding before the Registrar can prefer such an appeal. The appellant is not a party to the proceeding before the Registrar initiated by respondent 3. In so far as the remedy provided by S. 16 is concerned, that remedy can only be availed of against a registered union. The appellant is not a registered union, and, therefore, this remedy was not in existence on the date on which the appellant preferred its

petition to this Court under Art. 226 of the Constitution.

21. We are, therefore, of the opinion that the appeal be allowed, and accordingly we allow it with costs. The appellant will also get Rs. 75 by way of costs of the petition before the learned single Judge. A writ shall issue to the Registrar. Respondent 2, directing him to hear the application for registration made by the appellant and prohibiting him from registering respondent 3 union without following the provisions of the third proviso to S. 14. Liberty to the appellant''s attorneys to withdraw the amount of security furnished.