
**M.P. Rashtriya Brooke Bond Chaha Karmachari Sangh, Kanhan, Nagpur
Vs Industrial Court, Nagpur and others**

Spl. Civil Application No. 1142 of 1970

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Sept. 20, 1975

Acts Referred:

Bombay Industrial Relations Act, 1946 " Section 123A, 13, 16, 16(1), 16(3)

Citation: (1975) MhLj 353

Hon'ble Judges: U.R. Lalit, J; M.N. Chandurkar, J

Bench: Division Bench

Advocate: S.W. Dhabe, for the Appellant; V.Y. Pradhan, For respondent No. 2, V.V. Naik and Respondents 1 and 3 not represented, for the Respondent

Final Decision: Dismissed

Judgement

M.N. Chandurkar, J.

The petitioner has filed this petition challenging the orders of the Assistant Registrar of Unions, Nagpur and the

Industrial Court, Nagpur, by which the respondent No. 2 was held to be entitled to be registered as a Representative Union in respect of the

industry engaged in blending and packing of tea in the local area of Ramtek Tahsil, Nagpur District. It is not in dispute that the petitioner was a

recognised Union u/s 3 of the G. P. and Berar Industrial Disputes Settlement Act, 1947 (hereinafter referred to as the C. P. Act), before the

Bombay Industrial Relations Act, 1946 (hereinafter referred to as the Bombay Act) was made applicable to the Vidarbha Region with effect from

1-5-1965 consequent on the enactment of the Bombay Industrial Relations (Extension and Amendment) Act, 1964 (No 22 of 1965). u/s 123A of

the Bombay Act it is provided in clause (e) of the proviso that any union registered as a recognised union for any local area for any industry under

the Act so repealed shall be deemed to be a Representative union for the industry in that local area under that Act. The Bombay Act did not

contemplate the concept of a recognised union but instead it dealt with the concept of a representative union u/s 13 of that Act. In sub-section (1)

of section 13 it was provided that any union which has for the whole of the period of three calendar months immediately proceeding the calendar

months in which it so applies under this section a membership of not less than twenty-five per cent, of the total number of employees employed in

any industry in any local area may Applying in the prescribed form to the Registrar for registration as a Representative Union for Such industry in

such local area. Section 16 provided for registration of another union in place of the existing registered union. Now, the respondent No. 2 alleging

that it was a trade union duly registered under the Trade Unions Act and that industry engaged in blending and packing of tea in Ramtek tahsil it

had a membership of 374 out of the 609 employees during the relevant months of September, October and November 1967, applied u/s 16 of the

Bombay Act for registration as a Representative Union in place of the petitioner Union. A copy of the constitution of the respondent Union was

also filed. A notice of this application was issued to the petitioner Union calling upon it to show cause why the respondent Union should not be

registered in place of the petitioner Union as provided u/s 16 (1) of the Bombay Act. The inquiry which the respondent No. 3, the Assistant

Registrar of Union, was required to make on the application of the respondent Union was regulated by the provisions of rule 28A of the Bombay

Industrial Relations Rules, 1947 (hereinafter referred to as the Bombay Rules). In accordance with sub-rule (3) of rule 28A he asked both the

Unions, i.e. the petitioner and the respondent Unions, to produce:

(a) Membership Register from March 1967 to November 1967;

(b) Counterfoils of receipts of subscription for nine Calendar months i.e. March 1967 to November 1967;

(c) Minute book covering the above period;

(d) Gash book;

(e) Bank Pass Book;

(f) An audited statement of membership for each of the nine calendar months i.e. for the period March 1967 to November 1967;

(g) A copy of the certificate of registration under the Indian Trade Unions Act, 1946.

Accordingly the respondent Union had submitted a detailed list of its members showing the date and the receipt numbers under which the

employees held membership, as also the ticket numbers, so as to facilitate the identification of the employees concerned. This list was not only

made available for inspection to the petitioner Union but a copy of this list was also given to the petitioner Union. On 26-6-1968 the petitioner

Union filed its statement of objections to the claim of the respondent Union for registration. Its substantial objection was two fold. Firstly,

according to the petitioner Union for the relevant period no monies were deposited in the Bank and thus the membership claimed by the applicant

Union was bogus and could not be considered for the purposes of the application u/s 16, because, according to it, it had 374 members, the

requisite amount should have been found in the bank account. Secondly, its case was that the membership was bogus. It may be noted here that in

paragraph 8 of this statement which is at page 35 of the original record, it was stated on behalf of the petitioner Union that "the non- applicant

further submits that it will file further objections to which and every name of member at the time of scrutiny" (sic). This statement obviously

contemplates that the Union had at some stage intended to give a list of names to show that some employees shown by the respondent Union as

being members were really not members. The obvious object was to show that the membership of those employees was to be put in issue. The

respondent Union also submitted certain objections and pointed out some alleged illegacies committed by the petitioner Union which, according to

it, disentitled the petitioner Union from continuing as the recognised Union. The respondent Union also made a charge that the membership of the

petitioner Union was bogus inasmuch as it had not obtained signatures of the so called members on the receipts issued. The other objection was

that the petitioner recognised Union had not amended its constitution as required by section 23(1)(i) of the Bombay Act which provided that the

membership subscription shall not be less than fifty paise per month. It is not in dispute that originally so far as one class of employees was

concerned, the subscription was twenty five paise per month or Rs. 3/- per annum which was payable annually. It, however, appears that after the

Bombay Act became applicable to the Vidarbha Region, the petitioner Union had passed a resolution on 22-10-1965 amending its clause with

regard to subscription. Nothing, however, turns on the objections raised by the respondent Union.

2. Now, after the respondent Union filed the documents called for from it and the petitioner Union had submitted its objections, the respondent

No. 3 decided to have a spot verification of the membership of the respondent Union and asked the General Secretary of each of the two Unions

to be present at the time of the spot inquiry on 26-8-1968 at 9-30 a.m. It does not appear that the spot inquiry was made on that date but the

record discloses that the spot inquiry was made by the respondent No. 3 with intimation to both the parties on 20-1-1969, 28-2-1969 and 21-3-

1969. The respondent No. 3 made a separate record of the results of the spot inquiry. The record discloses the names of the employees whom he

contacted and from whom he ascertained about the membership of the respective Unions. After the spot inquiry was completed, he heard

arguments on both the sides and then passed an order on 30-9-1969 holding that the respondent Union fulfilled all the conditions as laid down in

section 13 of the Bombay Act for being registered as a representative Union in the industry engaged in blending and packing of tea in the local area

of Ramtek tahsil in place of the registered Union and that the respondent Union was not otherwise found to be disqualified for being recognised as

a representative Union in the said local area. Consequently he passed an order registering the respondent Union as a Representative Union in place

of the petitioner Union. The records of the respondent Union showed that there was a negligible amount of Rs. 1.43 in the Bank when the pass

book was submitted to the respondent No. 3, but the respondent No. 3 found that not depositing the amount in the Bank could be an irregularity

and that this did not vitiate the membership of the Union. In addition he found that the Government Auditors had audited the accounts of the Union

and had not raised any objection with regard to the funds. He took the view that if the office bearers of the Union did not deposit the membership

fees in the bank or even if the entire amount was lost the workers who had paid the subscription could not lose their membership of the Union.

When he made the spot inquiry he had borne in mind the fact that a member who was in arrears for more than three calendar months could not be

taken into account and he has specifically referred to this in paragraph 51 of his order. He also negated the objection that the membership of the

respondent Union was bogus as being baseless, and according to him, the petitioner Union had not produced any evidence to show that the

respondent Union had no valid membership. Since some grievance has been made of this approach, it is necessary to refer to the order of the

respondent No. 3 where in paragraph 60 he had observed:

The Registered Union has not produced any evidence to show that the applicant Union does not have 374 members or any membership. The

applicant Union has on the contrary produced the counter foils showing the subscription paid by all the members of their Union and they have also

produced other relevant records to prove that they have the number of members claimed by them. Actual membership of the applicant Union and

the Registered Union has been checked by me by spot verification.

He then considered whether the objections made by the respondent Union in respect of the functioning of the petitioner Union were valid and he

did not find any substance therein. Even with regard to the membership of the petitioner Union, the respondent No. 3 had made an inquiry on the

spot and as a result of this inquiry he reached the conclusion that in the months of September, October and November 1967 there were 598

employees in the industry concerned and during those months the membership of the petitioner Union was 147 while the membership of the

respondent Union was 368, and thus he took the view that the respondent Union had a larger membership and consequently it was entitled to

registration as a Representative Union.

3. An appeal was filed by the petitioner Union against this order of the respondent No. 3 before the Industrial Court at Nagpur. One of the

contentions raised before the Industrial Court was that the application of the respondent Union u/s 16 of the Bombay Act was not tenable as by

virtue of clause (c) of the proviso to section 123A of the said Act the rights and remedies of the petitioner Union under the G. P. Act were saved

and that the application should really have been made u/s 7A of the G. P. Act. This contention was negated by the Industrial Court. It appears

that before the Industrial Court the appointment of the respondent No. 3 as Assistant Registrar was also challenged but that contention was also

negated. The Industrial Court also negated the contention that the respondent Union could not claim to be a Representative Union because

under its constitution its object was to improve the economic, educational and social conditions of "the employees of its Union". These words are

taken from clause 3 of the constitution which recites as one of (be objects being "to endeavour to improve the economic, educational and social

conditions of the employees of the Bharatiya Swatantra Brooke Bond Chaha Karmachari Sangh". The main ground of objections before the

Industrial Court, however, appeared to be that the subscriptions collected were not deposited in the Bank and this showed that the membership

was bogus. The other ground was that the inquiry made by the respondent No. 3 was defective inasmuch as he interrogated every fifth member of

the two Unions in order to ascertain their membership. But the learned Member of the Industrial Court took the view that the mere fact that the

subscriptions collected were not deposited in a Bank would not warrant the conclusion that the membership of the Union must be bogus and that

the petitioner Union had not shown as to how the conclusion that the respondent Union had 368 members and the petitioner Union had 147

members was erroneous. It observed:

The only ground on which this finding was attacked was that the membership of the respondent Union was bogus because the Union had not

deposited the subscription amount in a recognised Bank.

The learned Member of the Industrial Court found that the various receipts, registers and cash account book filed by the respondent Union and the

method of verification adopted by the learned Assistant Registrar regarding the membership of both the Unions left absolutely no doubt that the

respondent Union had a much larger membership. Consequently the appeal filed by the petitioner Union was dismissed. The petitioner has now

filed this petition challenging the orders of the two authorities against it.

4. At the outset, it is argued by Mr. Dhabe, learned counsel for the petitioner, that the application u/s 6 of the Bombay Act was not maintainable

and that the provisions which really governed the matter of cancellation of the recognition of the petitioner Union and recognition of another Union

in its place as a recognised Union were those contained in sections 7 and 7A of the G. P. Act in view of the provisions of clause (c) of the proviso

to section 123A of the Bombay Act. This necessitates a reference to the relevant provisions of the Bombay Act and the C. P. Act. Now, the C. P.

Act was repealed by the Maharashtra Act No. 22 of 1965 which introduced section 123A in the Bombay Act. The provisions of section 123A

are identical to those which are generally found in a repealing and saving provision in an Act or similar provisions in the General Clauses Act. The

relevant part of section 123A reads as follows:

The Central Provinces and Berar Industrial Disputes Settlement Act, 1947, is hereby repealed; Provided that-

(a) -

(b)..

(c) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed shall not be affected and any investigation,

legal proceedings, or remedy in respect of any such right, privilege, obligation, or liability shall, so far as it is not inconsistent with the provisions of

this Act, be made, instituted continued and availed of as if the said Act had not been repealed and continues in operation;

(d)

(e) Any Union registered as a recognised Union for any local area for any industry under the Act so repealed shall be deemed to be a

representative Union for the industry in that local area under this Act;

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5. According to the learned counsel for the petitioner, proceeding for cancellation of its status as a recognised Union under the C. P. Act was a

remedy contemplated by clause (c) above and, therefore, the only remedy which was "open to the respondent Union was the one provided by

sections 7 and 7A of the C. P. Act, and the application of the respondent Union should at least have been dealt with as if it was an application

under sections 7 and 7A of the G. P. Act. Now, section 7 of the O. P. Act provides for cancellation of certificate of a recognised Union on the

ground, among others, that the Union had not for the whole of the period of six months preceding the date of application a paying membership of

not less than between fifteen and twenty per cent as the State Government may prescribe for the local area or industry concerned or that the Union

was registered under a mistake, misrepresentation or fraud. This is the only clause which is material for our present purpose. Section 7A provided

for recognition of another Union in place of the recognised Union. It provided:

7-A (1) If at any time, any Union (hereinafter in this section referred to as "applicant Union") makes an application to the Registrar for being

recognised in place of the Union already Registered as a recognised Union (hereinafter in this section referred to as ""recognised Union"") for an

industry in any local area, on the ground that it has a larger membership of employees employed in such industry, the Registrar, shall call upon the

recognised Union by a notice in writing to show cause within thirty days of the receipt of such notice why the applicant Union should not be

recognised in its place.

(2) If, on the expiry of the notice under sub-section (1) and after holding such inquiry as he deems fit, the Registrar is satisfied that the applicant

Union complies with the conditions of recognition specified in section 4 and that its membership was to the date of application under this section

larger by at least five per cent than the membership of the Recognised Union, he shall, subject to the provisions of section 3, register the applicant

Union as a recognised Union.

(3) On the registration of the applicant Union under sub-section (2), the certificate of registration of the recognised Union shall stand cancelled.

(4) No action under this section shall be taken unless a period of two years has elapsed since the registration of the recognised Union:

Provided that in the case of a recognised Union registered before the 1-1-1956 commencement of the Madhya Pradesh Industrial Disputes Settlement

(Amendment) Act, 1955, such period shall be counted from the date of the commencement thereof,

Explanation:-In determining the membership for purposes of subsection(2) any person, who-

(i) has not been continuously on the roll of members of the Union for a period of at least twelve months immediately before the date of application;

and

(ii) is in arrears of subscription payable to the Union for a period exceeding three months;

Shall not be counted as a member of the Union.'''''

6. Now, according to the learned counsel for the petitioner, while u/s 7 A of the G. P. Act for the purposes of determining the membership a

member who has not been continuously on the roll of members of the Union for at least twelve months cannot be considered as a member for the

purpose of determining the membership of another Union which wants to claim the status of a recognised Union, u/s 16(3) of the Bombay Act this

period is only three calendar months and the inquiry officer has merely to find out what was the membership of the applicant Union during the

whole of the period of three months immediately preceding the calendar month in which it made the application on the ground that it had a larger

membership than the original recognised Union or the Representative Union. Now, it is difficult for us to appreciate how the proceedings for

cancellation of the status of a recognised Union under the G. P. Act which was deemed to have the status of a Representative Union under the

Bombay Act would, after the repeal of the G. P. Act, be governed by the provisions of that Act. Apart from the question whether the duration of

the period for which a person had to be a member for the purposes of ascertaining the membership which is differently provided for u/s 7A of the

G. P. Act and section 16(3) of the Bombay Act amounts to an inconsistency or not, it is difficult for us to accept the contention that the

proceedings In the matter of cancellation of the status of the petitioner Union as a Representative Union is covered by clause (c) of the proviso to

section 123A. As is usual with a saving clause (c) of the proviso to section 123A of the Bombay Act saves any right, privilege, obligation or

liability acquired, Accrued or incurred under the G. P. Act and it also provides that any investigation, legal proceedings, or remedy in respect of

any such right, privilege, obligation or liability shall, so far as it is not inconsistent with the provisions of the Bombay Act, be made, instituted,

continued and availed of as if the said Act had not been repealed. The petitioner Union had no doubt a right as a recognised Union under the G. P.

Act, but by section 123A of the Bombay Act itself the recognised Union under the G. P. Act is to be deemed to be a representative Union for the

purposes of the Bombay Act. This deeming fiction must be given its full effect, and any reference to a Representative Union in the Bombay Act

will, therefore, be deemed to be a reference to the recognised Union under the C. P. Act and all rights which a Representative Union had under the

Bombay Act will automatically become vested in the former recognised Union without any independent action in the matter of its registration as

contemplated by section 13 of the Bombay Act. Thus, when clause (c) saves rights of a recognised Union under the C. P. Act it refers to the rights

which had become vested in it under that Act, and whenever a right has become vested and there was a remedy under that Act in respect of such

right, then even that remedy was saved. The remedy contemplated by the saving clause was clearly a remedy in respect of a right. Now, what the

respondent Union was seeking to do in the proceedings initiated by it was to exercise its own right u/s 16 of the Bombay Act to get itself registered

if it was able to show that its membership was larger than the membership of the petitioner Union. The proceedings which were initiated by the

respondent Union for its own recognition in place of the petitioner Union was a remedy in respect of the right given to it by the Bombay Act. These

proceedings cannot be construed as a remedy in favour of the petitioner Union for the enforcement of any right under the G. P. Act. It is not in

dispute that the words ""privilege, obligation or liability"" were not relevant for the purposes of the contention of the petitioner Union. The petitioner

Union was entitled to continue as a Representative Union under the Bombay Act so long as its status was not disturbed by any other Union in

accordance with the provisions of section 16. This matter of recognition of the respondent Union as a Representative Union under the Bombay Act

had, therefore, to be dealt with under the provisions of the Bombay Act itself and the provisions of sections 7 and 7A of the G. P. Act having been

repealed, they could really not be availed of by the petitioner Union. We must, therefore, reject the contention that the respondent No. 3 had

committed an error in making an inquiry in accordance with the provisions of the Bombay Act on the application filed by the respondent Union.

7. The learned counsel for the petitioner has referred us to a decision of this Court in *Central India Agencies v. Laxminath* 1967 Mb. L J 937. in

which a Division Bench had taken the view that the remedy of an employee who was originally governed by the G. P. Act and whose services

were terminated by an order dated 10-2-1965 lay in the form of an application u/s 16 of the G. P. Act and that it was the C. P. Act that was

applicable. There the application was made on 6-8-1965 to the Labour Commissioner u/s 16 of the G. P. Act and the contention of the employer

was that the application was not maintainable as the G. P. Act was repealed by the Bombay Act and that the right to reinstatement and back

wages had not accrued and was not acquired under the repealed Act. Negating this contention, the Division Bench held that clause (c) of the

proviso to section 123A of the Bombay Act preserved privileges, obligations or liabilities acquired, accrued or incurred under the old Act, in

addition to the rights accrued under that Act, and the liability of the employer was preserved by the saving clause and could be enforced only u/s

16 of the C. P. Act. Now, the decision is clearly distinguishable inasmuch as the termination of the employee in that case had taken place before 1-

5-1965 on which date the G. P. Act stood repealed. His right to have the termination declared illegal and to claim reinstatement had already come

into being as a result of the termination order passed on 10-2-1965. At that time his remedy was the one provided in section 16 of the G. P. Act

and that was why it was held that the right and the remedy were both saved and the liability was also saved. An argument was advanced in that

case that section 78 of the Bombay Act which provided for adjudication of the legality or otherwise of the action of the employer was more

comprehensive because it dealt with the subjects covered by sections 16, 40, 41 and 42 of the G. P. Act and there was, therefore, an

inconsistency within clause (c) of the proviso to section 123A, and consequently the provisions of the G. P. Act were not applicable. While

rejecting this contention the Division Bench observed:

Giving slightly wider powers to a forum under the Bombay Act than what the tribunal under the C. P. Act had, would only make some variation,

but that is not a matter of inconsistency or irreconcilability. The limitations in the two Acts and the forums prescribed therein are somewhat

different, but the proper way to distinguish the two sections would be by saying that certain provisions therein are variant.

It was pointed out that a variance or difference does not necessarily amount to inconsistency so as to make the two provisions ""in irreconcilable

conflict."" Now, in the instant case the question of inconsistency does not, in our view, arise at all. It must be remembered that a remedy which is

contemplated by clause (c) of the proviso to section 123A is the remedy which the petitioner wanted to take recourse to with a view to enforce

some right under the old Act. The saving clause in section 123A, proviso clause (c), is not at all attracted in the instant case.

8. Another decision which took the same view and reported in M/s. Chhotabhai Jethabhai Patel v. The Industrial Court 1967 Mh. L J 40 was also

cited before us. There the employee was, dismissed on 25-4-1965 and it was held that his remedy lay before the Labour Commissioner under the

provisions of the G. P. Act. For the reasons already given by us even this decision will not be of any assistance to the petitioner.

9. It was also sought to be argued that the G. P. Act enabled a recognised Union to make a reference to the Industrial Court u/s 38-A or 41

thereof which the petitioner alone could have invoked, and since the respondent Union, even though it was given the status of a Representative

Union under the Bombay Act, would not be able to invoke the provisions of section 38-A or 41 "because even though section 123A of the

Bombay Act, by clause (e) of the proviso, conferred the status of a Representative Union on the petitioner, the reverse was not true, and if the

respondent Union was recognised and registered as the Representative Union, it would not necessarily become a recognised Union under the G. P.

Act. This, according to the learned counsel, would seriously prejudice the employees and this must necessitate the matter with regard to

cancellation of the status of the recognised Union to be decided in accordance with the G. P. Act. Now, in our view, this contention is based on a

misconception of the scope of sections 38-A and 41 of the C. P. Act and clause (c) of the proviso to section 123A of the Bombay Act. The

reference of an industrial dispute contemplated by section 38-A arises only under certain circumstances. It is no doubt true that a recognised Union

under the G. P. Act by virtue of its status could agitate certain demands for the benefit of the employees, and if conciliation proceedings failed, then

the recognised Union could take the matter by way of arbitration to the Industrial Court. Though the right to apply to the Industrial Courts vested in

the recognised Union, under the Act, this right so far as section 38-A is concerned, is really an inchoate right, and the occasion for the exercise of

that right would arise only under certain circumstances, namely, the demands being made and conciliation having failed. It is only if all this happens

that the occasion for taking the matter to the Industrial Court u/s 38A arises. This right no doubt flows from the capacity of the recognised Union,

but if there is no occasion to exercise that right it cannot be said that that was a vested right within the meaning of clause (c) of the proviso to

section 123A. Same is also the position with regard to section 41 of the C. P. Act. Section 41 enabled a "representative of the employees" which

term covers the recognised Union to apply to the State Industrial Court or the District Industrial Court to decide whether a strike or lock out or

any other change of which notice has been given or which has taken place is illegal. Here again the exercise of this right depends on some change

having taken place which could be declared as illegal. If no change has taken place prior to 1-5-1965 which can be said to be illegal, there can be

no right to make an application u/s 41 which can be said to have been saved under clause (c) of the proviso to section 123A of the Bombay Act.

Therefore, there is no substance in the contention that by taking recourse to the procedure u/s 16 of the Bombay Act the petitioner Union is being

deprived of any right which has already accrued to it as the occasion for the exercise of such right had never arisen.

10. Coming to the merits of the case, the contention of the learned counsel for the petitioner Union can be split up into two parts. Firstly, it is

contended that absence of any money in the bank was itself sufficient to show that the claim of the respondent Union that it had a larger number of

membership was unjustified. Secondly, it is contended that the respondent No. 3 has recorded no evidence and he has miserably failed to follow

the procedure prescribed in sub-rule (8) of rule 28 of the Bombay Industrial Relations Rules, 1947, and the finding that the respondent Union had

a larger membership without any oral evidence must be regarded as a finding purely on surmise when not even an office-bearer of the respondent

Union has come forth to depose to the correctness of the records which were produced before the respondent No. 3. We shall take up the first

contention first. According to the learned counsel, it was obligatory under clause 14 of the constitution of the respondent Union to deposit all

monies in a bank of good standing and that was the only and the best evidence to prove the genuine paid membership of the Union. Clause 14 (a)

of the constitution of the respondent Union reads:

All monies, save those immediately required, shall be deposited in a bank of good standing. The President and the Treasurer shall jointly make

and be responsible for all financial transactions and shall operate accounts of the Bank.

11. Now, while it may be true that a substantially large amount of funds of a Union in a bank may be a good indication of its sound financial

position and large membership, it is difficult to say that the converse will always be true. It is the responsibility of the office-bearers of a Union to

be careful with the funds of a Trade Union which are raised by way of subscriptions paid by the employees. The representative status accrues to

the Union as a result of the employees becoming the members of the Union and the consequent payment by the employees of their membership

fees and not from the fact that the amount so collected is deposited in a bank or not. A Trade Union is a union-of employees, and if employees

have done their duty by making their contributions to the fund of the Union by way of membership fees, the right which they have acquired of being

members of the Union can not be adversely affected by the conduct of some of the office bearers of the Union in not abiding by the mandate of the

constitution of their Union which required the monies in their hands to be deposited in a bank. In the instant case, the respondent Union has filed on

record the accounts which are audited by a Government Auditor. When the accounts are audited by a Government Auditor and indeed by any

auditor for the matter of that-and there is no adverse note by the auditor it is prima facie proof of the fact that the receipts have been well

accounted for and so also the expenditure, which, unless it was supported by satisfactory vouchers, could not have been accepted by the Auditor.

The audited balance-sheet, therefore, is prima facie proof of the fact that the accounts were in order, and the mere absence of the balance of the

funds in the Bank could not, therefore, in our view, be indicative of the proof of inadequate membership of the Union.

12. The learned counsel for the petitioner contends that audited accounts are no indication of the fact that the members themselves have paid their

subscriptions. This question however, is being raised for the first time, and indeed such a challenge cannot be made in an omnibus manner. If a

doubt about the genuineness of membership of any particular member is thrown, then the matter can well be inquired into as to whether he had

himself contributed to the membership or that somebody also had paid his membership fees, and if so, what is the effect. But such a question

cannot be allowed to be raised for the first time in this writ petition. Indeed, the whole challenge in the written statement of the petitioner Union to

the claim of a larger membership by the respondent Union appears to be based on the absence of sufficient funds being found in the Bank. As

already pointed out by us, the balance in the Bank can be no indication of the number of membership of a Union.

13. Now, the second contention that the inquiry has not been made in accordance with rule 28-A, sub-rule (8), of the Bombay Rules also appears

to us to be without any substance. We have gone through the entire record of the enquiry which is produced before us by the learned Assistant

Government Pleader. Though the entire records of the respondent Union were made available to the office-bearers of the petitioner Union, there is

no challenge to the membership of any individual person and it is not the claim of the petitioner Union even in this petition that out of the list of 374

members supplied by the petitioner, it is in a position to challenge the genuineness of membership of any particular person. The procedure which

was adopted by the respondent No. 3 was that he went to the factory with notice to both the parties and there is evidence to show that the spot

verification is made in the presence of the representatives of both the Unions. He questioned every fifth person in the lists supplied by the two

Unions. He recorded in the form of a statement what this every fifth employee had to say with regard to the Union of which he was a member. He

left out of consideration persons who claimed to be members of both the Unions, and on the basis of such sample survey, he came to the

conclusion that the respondent Union had a larger membership as claimed by it as compared to the claim 147 members made by the petitioner

Union. Now, what the learned counsel for the petitioner contends is that sub rule (8) of rule 28-A of the Bombay Rules requires examination of

witnesses which the respondent No. 3 has not done and that the sample survey was, therefore, of no assistance in arriving at the figures of

membership. Sub-rules (7) and (8) of rule 28-A are as follows:

(7) The registrar may adopt such sampling method as he may deem fit, in verifying the membership register of a union.

(8) Where in respect of objections raised against the membership of a union, the number of witnesses to be examined is very large, the Registrar

may examine such number of witnesses as he may determine by adopting such sampling method, as the Registrar may deem fit. The Registrar may

with the consent of the parties, examine the witnesses in camera.

Now, these two provisions have been made to indicate the nature of the inquiry that is required to be made by rule 28-A for the purposes of

sections 13, 16, 17 or 23. In each one of these sections, inevitably the inquiry has to be directed to ascertain the number of members of the

concerned Union. Section 13 provides for registration as a Representative Union in sub-section (1), registration as a qualified Union in sub section

{?}, and registration as a Primary Union in sub-section (3). In the case of a Representative Union, the membership has to be not less than 25 per

cent; in the case of a qualified Union, the membership has to be not less than 5 per cent; and in the case of a Primary Union, the membership has to

be not less than 15 per cent of the total employees employed in the industry or in the undertaking, as the case may be. u/s 16 it has to be

ascertained whether the Union applying for registration in place of the existing registered Union has a larger membership. Section 17 provides for

re-registration of the Union whose registration has been cancelled on the ground that it was registered under a mistake or on the ground that the

membership of the Union has for a continuous period of three calendar months fallen below the minimum required u/s 15 for its registration. Here

again, the inquiry has to be made as if it is an inquiry u/s 13. Section 23 provides for the conditions which a Union must satisfy if it wants to be on

the approved list. Under proviso (b) to subsection (1) there is occasion for inquiry into the membership when two or more Unions fulfilling the

conditions necessary for being entered in the approved list apply in respect of the same industry in any local area in the same calendar month and

the Union having the largest membership of employees in the industry in the calendar month immediately preceding the calendar month in which

they apply has a right to be entered in the approved list. Subsection (4) again gives the right to any Union which has a larger membership if it

satisfies the conditions in sub-section (1) to apply for being entered in the approved list in place of the already approved Union. Thus, one of the

important facts which the authority entrusted with the duty of registering Unions has to ascertain is the membership. Basically in such an inquiry he

will have to find out whether the number of membership disclosed by the concerned Union is the correct number and whether the persons whose

names are disclosed as members are really members of the Union which claims them to be their members.

14. The inquiry is either intended to confer a particular status under the Act, namely, registration as a Representative Union or as some other kind

of Union like a qualified Union or a Primary Union, or sometimes it is an inquiry the result of which will be to deprive the already recognised Union

of its status and rights under the Act. The right of a Representative Union to represent the employees in an industry is a valuable right. Such a right

cannot be taken away as a result of any administrative inquiry. The inquiry must, therefore, be of a quasi-judicial character in which the principles

of natural justice must be observed and such an inquiry must obviously be made in the presence of the parties who will be effected by this inquiry.

This is also made clear by the provisions of section 18 which specifically states that the authorities under the Act including the Registrar which term

means the Registrar of Unions under the Act and includes Additional Registrar, and Assistant Registrar of Unions wherever the powers are

conferred on him, will be vested with the same powers as are vested in Courts in respect of proof of facts by affidavits, summoning and enforcing

the attendance of any person and examining him on oath, compelling the production of documents; and issuing commissions for the examination of

witnesses. The procedure prescribed in rule 28-A is an elaborate procedure which underlines the fact that both the parties must be given

opportunity to prove their respective claims when one is made to the status of a Representative Union. There is, however, no warrant for the

proposition that a spot inquiry cannot be made or that oral evidence must be recorded in each case whether parties so desire or not. The Act is

applicable to the whole of the State. In a given case the number of employees in an industry may run into thousands and it will virtually be

impossible to examine each person to ensure whether he is a member of particular Union or not. It appears, therefore, that advisedly a provision is

made enabling the Registrar to verify the membership of a registered Union by a sampling method. What kind of sampling method he will adopt is

left to his discretion, and obviously the sampling method will have to be adopted having regard to the circumstances of each case. In the case of a

lesser number of employees in an industry, if every fifth man can be examined, in the case of a larger number, it may be that every tenth or fifteenth

man may be examined, and that is why discretion is given to him to decide what kind of sampling method he will adopt for verifying the registered

membership of a Union, If the Registrar acts on such verification, then unless any particular instances are cited by the contesting Unions or their

office-bearers, in our view, it will not be necessary for the authority concerned to go through the elaborate procedure of recording the statement of

each person. In our view, sub-rules (7) and (8) of rule 28-A have to be read together. Both these sub-rules together provide for the manner of

verification of membership. Sub rule (8) gives discretion to the Registrar to examine witnesses by a sampling method when the number of witnesses

is large. It is, however, clear from the words of sub-rule (8) that it is only where objections are raised against the membership of any particular

members of the Union and for the purpose of making an inquiry into those objections the number of witnesses to be examined is very large, the

Registrar has been given a discretion to examine such number witnesses as he may determine by adopting such sampling method as he may deem

fit. It is obvious that the names of witnesses will have to be supplied by the parties. Where the parties do not desire any witnesses to be examined

and indeed there is no occasion to examine such witnesses where no particular objections are raised against the membership of any particular

employees, it is difficult to see how a grievance can be made that the provisions of sub rule (8) have not been complied with. In the instant case,

we have pointed out earlier that in spite of a positive statement in the objections that at a later stage the petitioner Union will submit a list of those

persons to whose membership they have any objection, such a list has never been submitted at all. The respondent No. 3 had heard elaborate

arguments of which he has made notes and it does not appear that it was even contended before me that he should have examined some witnesses.

Whatever verification the respondent No. 3 made was made in the presence of the representatives of both the Unions at the factory premises and

a record of what each employee had said has been made, and, in our view, the provisions of sub-rule (7) of rule 28-A have been fully complied

with by the respondent No. 3. There was no occasion for him to record any further statements whatsoever. It is true that the respondent Union has

not examined any of its office bearers but it does not appear that any stage any of the documents filed by the respondent Union have been

challenged as either not genuine or fabricated. A full list of members with their card numbers and receipt numbers had been supplied, and it is

obvious that it was not possible for the petitioner Union to dispute the stand taken by the respondent Union that the persons in those lists were its

members. We are not, therefore, impressed by the argument that the inquiry made by the respondent No- 3 was in any way vitiated. Indeed, in our

view, that could be the best inquiry made by him. He has exhaustively dealt with all the contentions in his order. The record shows that every

possible care was taken to put down in writing everything that transpired at each hearing and at each sample survey. Having regard to these

circumstances, we do not see what other conclusion was possible to be arrived at either by the respondent No. 3 or by the State Industrial Court.

15. In the view which we have taken we must dismiss the petition, but in the circumstances there will be no order as to costs.