ASSOCIATION OF CHEMICAL WORKERS

v.

S.D. RANE AND ORS.

FEBRUARY 22, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971:

Section 14—Recognition of trade union—Procedure adopted by the Investigating Officer—Challenged by a group of workers—Report of Investigating Officer accepted by Industrial Court and High Court did not interfere with the same—On appeal held, under S.14 fresh application is prohibited for two years—Making application within one year from the date of order passed by the Industrial Tribunal also prohibited—Since the order of the Tribunal was passed in 1983 and sufficient time has elapsed, the embargo under S. 14 no longer available—Appellant Union if still seeks recognition it would be open to it to adopt such procedure as is available under the law.

Automobile Products of India Employees' Union **v.** *Association of Engineering Workers Bombay,* **[1990] 2 SCC 444 and** *Association of Engineering Workers* **v.** *Dockyard Labour Union & Ors.,* **[1995] Supp. 4 SCC 544, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1226 of 1996.

From the Judgment and Order dated 7.9.83 of the Bombay High Court in W.P. No. 3038 of 1983.

Narain Shethey, Manoj Wad, Ms. J.S. Wad and Ms. Usha Reddy for the Appellants.

R.K. Habbu, P.B. Agrawala, Satish Agrawala for the Respondent No. 3.

The following Order of the Court was delivered :

This appeal by special leave arises from the order of the Division

A Bench of the Bombay High Court made on September 7, 1983 in W.P. No. 3038 of 1983. The appellant is a rival trade union under M/s. Chemicals & Fibers of India Ltd. [formerly ICI India Ltd.]. The Industrial Court in the order had pointed out that the total employees as on June 15, 1981 were 811 and the respondent-union had a strength of 448 as against the appellant-rival union having strength of 241. Thus it was held to be a recognised B union. The appellant had challenged the procedure adopted by the investigating officer under Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971 (1 of 1971) (for short, 'MRTUPULP Act').

C Shri Kailash Vasdev, learned counsel for the appellant, contended that the Investigating Officer was not justified in law in conducting spot verification and calling employees either by alternate number and verifying the same and that the procedure, therefore, was clearly illegal. It is not in dispute that the investigation requires to be done by the investigating D officer in accordance with the procedure prescribed under the Act. This Court in *Automobile Products of India Employees' Union* v. *Association of Engineering Workers Bombay,* [1990] 2 SCC 444 had held that the scheme relating to the recognition was to be done in accordance with the Act. Even if the parties consented to identify the number of employees in the Company by secret ballot, that method was not warranted by law and consent E did not cure the illegality of substitution of a procedure not prescribed under the Act. The same view was reiterated by this Court in *Association of Engineering Workers* v. *Dockyard Labour Union & Ors.,* [1995] Supp. 4 SCC 544. Consequently, the investigating office is required to conduct investigation in accordance with the procedure prescribed under the Act.

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In this case, the Industrial Court had directed the investigating officer by his order dated November 17, 1980 to give opportunity to the parties and then to conduct the enquiry in terms of its previous order dated October 5, 1979. In furtherance thereof, the investigating officer called upon the appellant as well as the respondent-Union to submit the list of G members of the respective associations, he initially had verified the lists and thereafter made spot verification that the basis. He submitted a report stating that "as per the direction given by the Hon'ble Member, Industrial Court, the undersigned conducted the enquiry on the spot in the presence of the two representatives of each union and members of the non-applica- H tion employees." This report of the total number of respective unions was

accepted by the Industrial Court and upheld no doubt not by a very reasoned order, by the summary order. The Division Bench did not interfere after perusal of records, since no error of law would be noticed. Hence this appeal. A

Under Section 14 of the Act, the prohibition to make a fresh application was imposed for a period of two years; further making of an application within one year from the date of order passed by the Industrial Court was prohibited. In other words, after the expiry of two years, if any rival union seeks any recognition, the Industrial Court is required to follow the procedure prescribed under Section 14 of the act and then to take a decision according to law. Since the order was passed by the Industrial Court in the year 1983 and sufficient time has already elapsed, the embargo under Section 14 of the Act no longer is available. Therefore, if the appellant still seeks any recognition of the appellant-Union in accordance with the provisions of the Act, it would be open to adopt such procedure as is available under law. B C D

The appeal is accordingly dismissed. No costs.

G.N. Appeal dismissed