

(2018)1 SCeJ 736

SUPREME COURT OF INDIA

Present : Justice A.K. Sikri and Justice Ashok Bhushan, JJ.

ALL ESCORTS EMPLOYEES UNION - Appellant,

Versus

THE STATE OF HARYANA & ORS. - Respondents.

M.A. Nos. 1744-1745 of 2017 in Civil Appeal Nos. 12843-12844 of 2017

23 March, 2018

Trade Unions Act, 1926, Section 6(e), 9(A), 22 - Appellant Trade union "All Escorts Employees Union" represented the employees of Escorts Group of Industries - One of the group companies was Escorts Yamaha Ltd. which was a joint venture of Escorts Management and Yamaha Motor Company, Japan - The employees of Escorts Yamaha Ltd. were also members of the employees-Union - In the year 2001, Escorts Yamaha Ltd. was taken over by Yamaha Motor Company, Japan and its name was changed to Yamaha Motor India Private Limited - Clause 4 of the Constitution of the appellant union, dealing with 'Membership', as it stood prior to the year 2001, *inter alia*, mentioned that any member who leaves the job of any Escorts concern at Faridabad will cease to be the member of the Union - By virtue of this clause, all the workmen working in Yamaha ceased to be the members of appellant-Union as they no longer remained the employees of any Escorts concern - In order to overcome this difficulty and to allow the workmen of Yamaha also to become members of the appellant-Union, clause 4 was amended, which was sent to Registrar, Trade Union, Haryana for its record and approval, however, the Registrar, Trade Union refused to approve this amendment - Workers of Yamaha had formed their own separate Trade Union, "All India Yamaha Motor Employees Sabha" which was also duly registered with the Registrar, Trade Union and stands recognised by the management of Yamaha - Once we find that all the workmen of Yamaha are members of the intervenor Union, "All India Yamaha Motor Employees Sabha", obviously the appellant-Union is not in a position to comply with the provisions of Section 9A read with Section 22 of the Act.

JUDGMENT

A.K. SIKRI, J. - (23rd March, 2018) - Application for intervention is allowed.

2) Appeals filed by All Escorts Employees Union were dismissed by this Court vide judgment dated September 14, 2017. Appellant is a registered Trade Union which was representing the employees of Escorts Group of Industries and is duly recognised by the employers as well. One of the group companies was Escorts Yamaha Ltd. which was a joint venture of Escorts Management and Yamaha Motor Company, Japan. The employees of Escorts

Yamaha Ltd. were also members of the employees-Union. However, in the year 2001, Escorts Yamaha Ltd. was taken over by Yamaha Motor Company, Japan and its name was changed to Yamaha Motor India Private Limited (hereinafter referred to as the 'Yamaha').

3) Appellant-Union has its Constitution. Clause 4 thereof deals with 'Membership'. This clause as it stood prior to the year 2001, *inter alia*, mentioned that any member who leaves the job of any Escorts concern at Faridabad will cease to be the member of the Union. By virtue of this clause, all the workmen working in Yamaha ceased to be the members of appellant-Union as they no longer remained the employees of any Escorts concern. In order to overcome this difficulty and to allow the workmen of Yamaha also to become members of the appellant-Union, clause 4 was amended. This amendment was sent to Registrar, Trade Union, Haryana for its record and approval. However, the Registrar, Trade Union refused to approve this amendment. This decision was challenged before the High Court of Punjab and Haryana by the appellant-Union by filing a writ petition. This writ petition was dismissed by the High Court vide judgment dated April 20, 2015. It is this judgment on the aforesaid issue as to whether the amendment could be allowed or not, was the subject matter of Civil Appeal Nos. 12843-12844 of 2017. While dismissing these appeals on September 14, 2017, this Court *inter alia* stated as under:

"23) The moot question here is as to whether such a Trade Union which primarily has the membership of the worker of particular Establishment or industry can broaden its scope by opening the membership even to those who are not the employees of the Establishment in respect of which the said Trade Union has been formed.

24) At this juncture, it becomes pertinent to note that the workers of Yamaha have formed their own separate Union, known as Yamaha Motor Employees Union. This Union is duly registered by the Registrar, Trade Union, Kanpur (Uttar Pradesh) having Registration No. 7179. It is this Union which now stands recognised by the Management of Yamaha. In these circumstances, the very purpose in amending Clause 4 in the manner it seeks to do stands frustrated. In any case, Clause 4 was amended in the year 2007 and that amendment has been approved by the Registrar, Trade Union. Therefore, issue of amendment in Clause 4, as carried out in June, 2001, becomes a non-issue.

25) In view of the aforesaid, it is not necessary to deal with the issue raised in these appeals as the issue does not survive. Civil Appeal Nos. 12843-12844 of 2017 Page 20 of 23 (arising out of SLP (C) Nos. 27020-27021 of 2015) Thus, leaving the question of law open, these appeals are dismissed."

4) From the reading of para 24 extracted above, it can be discerned that this Court took the view that since the workers of Yamaha had formed their own separate Trade Union which is also duly registered with the Registrar, Trade Union and stands recognised by the management of Yamaha, the very purpose of amending clause 4 stands defeated. It is further mentioned that, in any case, clause 4 was amended in the year 2007 and since that amendment has been approved by the Registrar, Trade Union, the issue of amendment in clause 4, as carried out in June, 2001, becomes a non-issue and, therefore, it is not necessary to deal with the issue.

5) In these applications filed by the appellant, it is submitted that the observation in para 24 to the effect that amendment to clause 4 carried out in the year 2007 has been approved by the Registrar, Trade Union is factually incorrect. It is stated that the Additional Registrar, Trade Union, Haryana in his counter affidavit has mentioned that the order dated October 21, 2015 was passed whereby the amendment approved vide letter dated November 24, 2007 was withdrawn/cancelled by invoking clause 4 of the General Clauses Act, 1897. Therefore, amendment to clause 4 carried out in the year 2007 also does not exist. On that basis, the prayer made in the applications is that findings given in paragraphs 24 and 25 of the judgment dated September 14, 2017 be recalled and the issue that arises for consideration should be decided on merits.

6) Insofar as factual error that has occurred in the judgment dated September 14, 2017 as pointed out in these applications is concerned, the appellant/applicant is correct in its submission. Though amendment to clause 4 of the Constitution of the appellant in November, 2007 was initially approved by the Registrar, however, the said approval was withdrawn by the Registrar vide order dated October 21, 2015. It was stated in the counter affidavit filed by the Additional Registrar that initially the amendment was approved inadvertently, which had occasioned because of the concealment of the material facts about the rejection of the earlier application by the Registrar. However, after this fact came to the notice of the Registrar, the amendment was withdrawn vide order

dated October 21, 2015 after following due procedure.

7) After hearing counsel for the parties, we are of the opinion that notwithstanding the aforesaid factual error, the end result remains unaltered. In case, the amendment to clause 4 which was initially approved by the Registrar, but later on withdrawn, vide order dated October 21, 2015, this decision of the Registrar would furnish a fresh cause of action to the appellant. It has not come on record whether this order was challenged at all or not.

8) Be that as it may, main reason in our judgment dated September 14, 2017 to dismiss the appeals was that the workers of Yamaha have formed their own separate Union which is duly registered and also recognised by the management of Yamaha. Therefore, the very purpose of amending clause 4 stands frustrated.

9) In this behalf, it would be pertinent to mention that All India Yamaha Motor Employees Sabha has filed intervention application. In this application, it is, *inter alia*, stated that intervenor Trade Union is formed for the exclusive benefit for the workmen of Faridabad Plant of Yamaha. It is further stated that all the workers of the said Faridabad Plant are the members of the intervenor Union and they are not being represented by the appellant-Union. These workers have elected the office-bearers of the intervenor Union and it is this Union which is now representing 100% workers working in the said Union and is negotiating with the employers. Insofar as appellant-Union is concerned, this Union represents the workers of Escorts Group of Companies. As per Section 6 of the Trade Unions Act, 1926 (hereinafter referred to as the 'Act'), it is necessary for the Trade Union to provide for the matters enumerated in the said Section. Clause (e) thereof deals with admission of ordinary members and provide as under:

“(e) the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as office-bearers required under section 22 to form the executive of the Trade Union;”

10) As per this clause, ordinary members should be those who are actually engaged or employed in an industry in which the Trade Union is connected. It is also significant to note that a Union in a particular establishment should have representative character. For this reason, Section 9A of the Act, which was inserted by Act 31 of 2001 w.e.f. January 9, 2002 mandates that a registered Trade Union of workmen shall at all times continue to have not less than ten per cent or one hundred of the workmen, whichever is less, subject to a minimum of seven, engaged or employed in an establishment or industry with which it is connected, as its members. Section 22 of the Act contains another stipulation, namely, not less than one-half of the total number of the office-bearers of every registered Trade Union in an unrecognised sector shall be persons actually engaged or employed in an industry with which the Trade Union is connected. Section 22 in the aforesaid form came to be substituted by Act 31 of 2001 w.e.f. January 9, 2002. Once we find that all the workmen of Yamaha are members of the intervenor Union, obviously the appellant-Union is not in a position to comply with the provisions of Section 9A read with Section 22 of the Act.

11) For these reasons, the applications praying for recall of the findings recorded in paragraphs No. 24 and 25 of the judgment dated September 14, 2017 passed in Civil Appeal Nos. 12843-12844 of 2017, are dismissed.

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