

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 12843-12844 OF 2017
(ARISING OUT OF SLP (C) NOS. 27020-27021 OF 2015)

ALL ESCORTS EMPLOYEES UNIONAPPELLANT(S)

VERSUS

STATE OF HARYANA & ORS.RESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

Leave granted.

- 2) The appellant-Union, known as All Escorts Employees Union, was formed way back in the year 1968. It is a registered Trade Union which was representing the employees of Escorts Group of Industries and is duly recognised by the employers as well. Some of the Establishments of Escorts Group were Escorts Ltd., Escorts Yamaha Ltd., Escorts JCB Ltd., Escorts Class Ltd. and Escorts Hospital. It is an undisputed fact that the workmen from

all these industries were members of the appellant-Union. As far as Escorts Yamaha Ltd. is concerned, it was a joint venture of Escorts Management and Yamaha Motor Company, Japan. In the year 2001, this company 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'). After this separation, the workmen working in Yamaha ceased to be the members of the appellant-Union, in view of Clause 4 of its Constitution which spelled out who could be the members of the Union. With an intention to take them within its fold again, the appellant-Union amended Clause 4 of its Constitution. Clause 4 deals with 'Membership'. As per the amended clause, workers employed in any erstwhile Escorts concern at Haryana are entitled to become the members of the appellant-Union. The aforesaid Clause 4 of appellant's constitution was amended in June, 2001. This amendment was sent to the Registrar, Trade Union, Haryana for its record and approval. The Registrar, Trade Union did not approve the amendment. Challenging the decision of the Registrar, Trade Union, writ petition was filed in the High Court of Punjab & Haryana by the appellant-Union. This writ petition has also been dismissed by the High Court vide impugned judgment dated April 20, 2015.

3) In the challenge laid to the view taken by the High Court, the question of law which is raised by the appellant-Union is as to whether a Trade Union can have a membership of the workmen from other industries? To put it otherwise, whether a Trade Union can have its members who are working in different establishments or industries enabling that Trade Union to espouse their cause?

4) In addition to the aforesaid facts noticed at a glance, it is desirable to set out other facts also so that the factual narration is complete:

The appellant-Union is a registered Trade Union having Registration No. 75 of 1968. It was formed and got registered under the Trade Unions Act, 1926 (hereinafter referred to as the 'Act') in the year 1968. Its registered office is located at 29, Neelam Chowk, Faridabad. The Union is duly recognised by the Escorts Group of Industries. The Constitution of the appellant-Union was duly approved by the Registrar of Trade Unions. Clause 4 of the Union's Constitution, as it originally stood, reads as follows:

"Membership

"Any workers who are employed in any Escorts concern at Faridabad and agree to follow the rules and regulation of the Union can become a member after

filling the membership form and by paying the membership fee monthly or annually. Any member who leaves the job of any of Escorts concern at Faridabad will cease to be a member of the Union.”

- 5) In the month of August, 2001 the establishment manufacturing two wheeler motorcycles under the brand name of ‘Yamaha’ got segregated from the Escorts Group of Industries. Thus, it became a 100% subsidiary of ‘Yamaha Motor Company, Japan’. In view of this separation, the Escorts Group of Companies ceased to have any concern with the manufacturing of motorcycle and ownership or management of motorcycle manufacturing unit which is now exclusively with the ‘Yamaha Motor Company, Japan’ named in India as ‘Yamaha Motor India Private Limited’. The Escorts Company in fact does not have any share-holding with it.
- 6) Since Clause 4 of the appellant’s Constitution provides membership to those workers who are employed in any Escorts concern at Faridabad, all the workers of Motor Cycle Manufacturing Unit who became workers of Yamaha also ceased to be the members of the appellant-Union inasmuch as, as per the aforesaid Clause 4 of the Constitution, workers of other industries cannot be the members of the appellant-Union.

7) The appellant-Union avers that even after the change of employment, the workers of Yamaha continued to be members of the appellant-Union. The appellant-Union even entered into settlements with the employer Yamaha on behalf of its workers. So much so, deductions from workers' salary towards membership subscription of the appellant-Union continued. As per the management of Yamaha, this happened due to the reason that it was kept in dark about the fact that its workers had ceased to be the members of the appellant-Union. Be that as it may, nothing turns on that. Fact remains that as per unamended Clause 4 of the appellant's Constitution, workmen of Yamaha did not remain the members of the appellant. Therefore, in order to bring the workers of Yamaha within their fold by giving them membership, the appellant-Union decided to amend Clause 4 of its Constitution by substituting the existing Clause 4 with the following Clause:

"Membership

Any workman who is employed in any of the industry originally established by the Escorts group and agrees to follow the rules, regulation and objectives of the Union can become a member after depositing the requisite subscription fee. His membership would stand cancel upon his retirement from the Industry or upon his submitting the resignation.

Clarification

The change of name of an Industry established by the Escorts group or change of management would not

affect the membership of the Union.”

- 8) The amendment was sent to the Registrar, Trade Unions, Haryana for its record and approval. The said amendment was not accepted by the Registrar of Trade Unions on the ground that there is no commonness of purpose with the current workers of the group. To put it straight, according to the Registrar, the appellant-Union cannot be said to be a Trade Union vis-a-vis Yamaha and that it can only function vis-a-vis Escorts Ltd. The operative portion of the order of the Registrar rejecting the amendment reads as under:

“If the industrial unit(s) manufacturing a particular kind of items, say agricultural items, happen to be segregated from the Escorts Group of Industries then the workers working in such unit(s) would automatically cease to continue as members of the present union under the existing Rule 4. However, under the proposed amending Rule 4 read with explanation appended thereto, such workers may continue to remain members of the union despite the fact that after such segregation they cannot have any commonness of interests with other workers of the Escorts Group of Industries. Such segregation has in fact taken place. By the time of submission of present request by the union on 25.06.2001 the Escorts Group of Industries used to manufacture two-wheeler motor cycles. But in August 2001 the unit manufacturing this two wheeler motor cycles under the brand name of ‘Yamaha’ segregated from the Escorts Group of Industries and has become a 100% subsidiary of “Yamaha Motor Company, Japan”. Since August, 2001, the Escorts Group of Industries has totally ceased to have any concern with the motor cycle manufacturing. After August, 2001 the Escorts Group of Industries has not been manufacturing motor cycles. The ownership and management of motor cycle manufacturing unit is now

of Yamaha Motor Company, Japan and the Escorts do not have any kind of concern therewith. The workers working in the motor cycle manufacturing have thus legally ceased to be the members of the present union by virtue of existing Rule 4 of the constitution. They do not have any commonness of interests with the workers of Escorts Group of Industries. But if the proposed amendment is allowed, such workers, if they so like, would continue to remain members of this union despite here being no commonness of interests. Such a provision would be contrary to the above said provisions of the Act.”

- 9) The said view of the Registrar, Trade Union, has been upheld by the single Judge as well as the Division Bench of the High Court. It may, however, be pointed out that during pendency of the writ petition, a further amendment was made in Clause 4 on November 27, 2007, which was approved by the Registrar, Trade Unions. The said amendment clause reads as follows:

“Any worker who is employed in any Escorts concern at Faridabad and agrees to follow the Rules, Regulations and Discipline of the Union can become a Member after filling Membership form and by paying the Membership Fee 1 rupee monthly or 12 rupees annually. Any member who leaves the job of any Escorts concern at Faridabad will be ceased to be the member of the Union.

Now the annual subscription would be Rs.100/-. The employees working in the combined companies of Yamaha, JCB, Class, Fortis and Eco Auto company Escorts (JCB) have remained the bona fide members of All Escorts Employees Union. They can still retain their Membership by paying the annual subscription.”

- 10) The said amendment, however, was not brought to the notice of the High Court. When the appellant-Union came to

know about this amendment, they filed a review petition enclosing the said amendment. However, the High Court rejected the review petition on the ground that “No review can, thus, be made on the basis of material which was not the subject matter of consideration”.

- 11) Impugned order passed by the High Court dismissing the writ appeal of the appellant herein reveals that it examined the provisions of Sections 6(e), 9-A and 22 of the Act on the basis of which it came to the conclusion that there has to be a direct connectivity between the industry and its workers. Para 13 of the judgment captures the essence of reasoning given by the High Court which is reproduced below:

“13. The statutory Scheme thus repeatedly refers to the direct connectivity between the industry where the worker or employee is engaged and the Trade Union in which such worker or employee is a member. The existence of commonness and relationship is therefore, *sine qua non* for the constitution of a Trade Union or enrolment of its members and office bearers. To say it differently, there cannot be a Trade Union for collective bargaining in a trade dispute where the Trade Union is not connected at all with the industry.”

- 12) Mr. Sanjay Parikh, learned counsel appearing for the appellant-Union, pointing out the connection of the workers of Yamaha with the appellant-Union, submitted that all the workers/employees working in different units in Escorts Group of

Companies including the unit manufacturing motorcycles, were members of the appellant-Union. He emphasised that even after the segregation of the said unit, workers of Yamaha continued to be the members of the appellant-Union and were also paying their subscription regularly. Yamaha had even recognised the appellant-Union as the management of Yamaha had entered into the settlements with the appellant-Union on June 4, 2010 and October 29, 2013 under the provisions of Industrial Disputes Act, 1947. He referred to those settlements which are annexed with the SLP Paper Book. Not only this, Yamaha has even been collecting the membership subscription of its workers and remitting the same to the appellant-Union. According to him, this factual position was sufficient to hold that the appellant-Union had right to represent the workers of Yamaha and, therefore, the amendment in question could not have been rejected.

- 13) On legal aspects, submission of Mr. Parikh was that the power given to the Registrar, Trade Union under Section 8 of the Act is an administrative power and not a quasi-judicial/judicial one. Thus, impugned order of the Registrar was in excess of his jurisdiction, contended the counsel. He also referred to the definition of "Trade Dispute" contained in Section 2(g) as well as

“Trade Union” incorporated in Section 2(h) of the Act from where he sought to draw sustenance in his argument that Trade Union can be formed for regulating relations between workmen and its employers; workmen and workmen or employers and employers. Submission was that it did not limit to the workers of a particular industry/establishment only. Another aspect from where he endeavoured to draw support was that right to form Trade Union was protected by Article 19(1)(c) of the Constitution of India and, therefore, if a person fulfils the requirements of becoming a member of a Trade Union and a Trade Union is accepting such person as a member, his right of joining a Trade Union cannot be denied in law.

- 14) Commenting upon and questioning the reasoning given by the High Court, he submitted that the scheme of Sections 6(e), 9-A and 22 of the Act nowhere confines to the workers of the establishment alone and even outsiders can be the members. He argued in this behalf that by amendment, the appellant-Union has broadened the scope of its membership clause. The amendment allowed workers of Yamaha to join the appellant-Union. The choice is with the workers of Yamaha. They may join the Trade Union or they may not. Even those workers who were members

of the appellant-Union before Yamaha was formed, they may continue as members, or they may resign from membership. By amendment, the appellant-Union has only clarified the membership clause. The fact, however, is that those workers who were members of appellant-Union continued their membership even after the formation of Yamaha. The appellant-Union, therefore, remained connected with Escorts Group of Industries and Yamaha by having their workers actually engaged therein as its members. Such amendment cannot be said to be violative of any provision of the Act.

- 15) Stiff resistance is put by the learned counsel appearing for the respondents, who justified the approach of the Registrar, Trade Union, which has received the imprimatur of the High Court as well. Referring to the same very definition of "Trade Union", the learned counsel argued that the analysis of the definition of the Trade Union clearly shows that the purpose of Trade Union is to maintain balance, harmony in the relations of the persons involved in industrial activity such as process and production. The purpose of the Trade Union is not only to secure harmony between employers and workmen but also it is intended to improve peaceful relations between employers and workers.

According to her, the definition further indicates that the Trade Union is formed primarily for the following two purposes. Firstly, for regulating the relations between (a) workmen and employers, or (b) workmen and workmen, or (c) employers and employers. Secondly, for imposing restrictive conditions on the conduct of any trade or business of its members. Trade Union is regarded essentially a tool for collective bargaining between employer and employee. However, it was not meant to disrupt the entire industry by way of strike or other such activity.

- 16) She also referred to the amendment made in the Act in the year 2001 which are aimed at checking multiplicity of Trade Unions, thereby promoting internal democracy and facilitating in the ordinary growth and regulation of Trade Unions. In this hue, she argued that in the Principal Act, it is provided in Section 4 that any seven members can make an application for registration. Whereas under Amendment Act, 2001, that seven persons applying for registration must be workmen engaged or employed in the establishment or an industry. As a result of these amendments, the Trade Unions were prohibited from introducing members not connected with the establishment or industry with which they intend to negotiate for workers right. The right to

negotiate as well as the protection from the civil and criminal liability is available to only those who are working with the particular Establishment or Industry. Third parties not connected with the establishment or industry should not be allowed to use the Trade Unions to further their vested interests.

- 17) Learned counsel for the respondents also argued that there were many registered Trade Unions of general nature prior to the amendment in 2001 mentioned above which were not connected with specific Industry as required in Section 4 and its proviso. There were also instances of industries like in the present case of Escorts Group whereby number of units had a common union but got fragmented with the advent of liberalization into the hands of the respective foreign collaborators. The commonness of interest was only the organisation as a social organisation its huge funds and assets but the commonness of professional interest between the workers of each unit were totally divergent. Union consisting of workers of other industries forces the management into submission and acceptance of unnecessary interference in normal functioning of the units. The very proof in the present case is that the workers employed in the unit of Yamaha situated in nearby location in Uttar Pradesh formed a separate Union and

got registered with the Registrar, Trade Union, Uttar Pradesh. Whereas many of the States have their own and different law on industrial relations. The hegemony and malice thereof is proved by the fact that the Yamaha unit in Faridabad did not (or could not) form a separate Union when even the management is supporting it and whey they continue to function under the Union of workers of another industry. Therefore, any disturbance in the representative character like in the present case will obviously have far reaching and damaging consequences even within the Union of different units and the industrial relations therein.

- 18) Referring to the aforesaid scheme of the Act, with particular emphasis on amendments carried out in the year 2001, learned counsel further argued that the right of membership of any organisation cannot be in isolation without *inter se* connection of rights and responsibilities under the law. Unless the rights percolate into a legally valid mechanism to secure them under other laws like the Industrial Disputes Act, 1947, such membership would be theoretical and in contradiction of the actual purpose *qua* the employment in a particular industry. Therefore, the conflicts emanating there from would be fatal for the very relationship of employer and employee thus defeating

the very purpose of maintaining orderly Trade Union without the hegemony of a particular Union or unnecessary interference by a minority Union for securing the rights of the workers. So to say any change in the interpretation of the object and structure of the working of the Act may result in the possibility of an unrelated Union in ruining the industry and also a possibility of a minority Union being misused by the management to manipulate the industrial relations in the unit to the disadvantage of the workers. Therefore, the objects and purposes of the amendment of Sections 4, 9-A and 22 in the year 2001 in maintaining a balance in the functioning of Trade Unions *qua* the industry. She also submitted that rights given to the workmen to form an association are not the same as rights given to the individual of forming such associations and, therefore, Article 19(1)(c) of the Constitution of India cannot be invoked by the appellant-Union, more so, when law permits the State to impose reasonable restriction on such a right.

- 19) Commenting upon the amendment to Clause 4 of the Constitution of appellant's Union carried out by the general body of the appellant-Union in its meeting on November 27, 2007, which was approved by the Registrar, she submitted that it was an inadvertent error on the part of the Registrar because of the

reason that the appellant had concealed the material fact about the rejection of earlier similar application by the Registrar, therefore, the approval was withdrawn vide order dated October 21, 2015 after following due procedure.

- 20) Management of Yamaha, though not made party in these proceedings by the appellant, was allowed to intervene. It has also defended the decision of the Registrar, as approved by the High Court. Learned counsel appearing for Yamaha submitted that after separation from Escorts Group, on June 23, 2001, a notice was issued by the Management of Yamaha to all their workmen informing them that as Yamaha is not concerned with Escorts Group of Companies directly or indirectly any more they cannot grant recognition to All Escorts Employees Union i.e. the appellant-Union herein. Thereafter, the workmen of Surajpur Plant of appellant company, who were also part of the appellant-Union, decided to form a separate Union. The workers of Surajpur Plant of Yamaha are now being represented by a separate Union namely "Yamaha Motor Employees Union", which were being earlier represented by the appellant-Union. The said Union is duly registered by the Registrar, Trade Union, Kanpur, Uttar Pradesh, having Registration Number 7179. Learned

counsel also argued that there was no commonality of interest between the workers of Escorts and that of Yamaha and, therefore, it was not open to the appellant to give membership to the workers of Yamaha. It was also argued that Escorts and Yamaha are in different trade and there are practical difficulties in dealing with appellant-Union which is essentially dealing with the management of Escorts Limited. It was also argued that by referring to approval of Clause 4 by the Registrar vide its order dated June 18, 2009, the appellant-Union had suppressed the material fact that by subsequent order dated October 21, 2015, the Registrar had recalled the aforesaid order and rejected the amendment. The appellant was, therefore, guilty of suppression of material fact. It was also submitted that some settlements were entered into by Yamaha with the appellant-Union as the appellant-Union kept Yamaha under dark and mislead it by claiming that workmen of Yamaha were the members of the appellant-Union and it had right to represent them. Regarding the scheme provided under the Act, learned counsel reiterated the submissions of the Registrar as well as reasoning of the High Court.

21) As per Clause 4 as originally stood, only those workmen

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who were employed in Escorts Group of Industries could become members of the appellant-Union. This Clause also made it clear that the membership of a workman who ceases to be employee of Escorts Group shall automatically be terminated. It was, thus, clear that the appellant-Union wanted only those workmen to be its members who are the employees of the Establishment in question, namely, the Escorts Group. After the hiving off motorcycle manufacturing unit from the Escorts Group and take over thereof by Yamaha, this unit has no common interest with the workers of the Escorts Group. This becomes clear as the workers of the two plants of the said motorcycle unit were taken over by Yamaha vide notice dated June 23, 2001. These workers have thereafter become the workers of Yamaha. Thus, by virtue of original/unamended Clause 4, they no longer remain members of the appellant-Union.

- 22) From the definition of Trade Union contained in Section 2(h) of the Act, it becomes apparent that such a Union is formed primarily for the purpose of regulating the relations between workmen and employers (which is the instant case) or it can be between workmen and workmen or between employers and employers. It includes any federation of two or more Trade

Unions also though we are not concerned with it. When we keep in mind the aforesaid objective of formation of a Trade Union, namely, regulating the relations between the workmen and its employer, normally such a Union of workmen would be of those workmen who work in a particular Establishment. This gets further strengthened when we peruse the definition of Trade Dispute contained in Section 2(g) of the Act. The Trade Unions of workmen while regulating their relations between the employers would normally have negotiations representing its workmen before the employer and in case those negotiations do not result in amicable settlement or resolution of disputes, such Trade Unions would raise trade dispute with its employer. Section 6 of the Act mandates a Trade Union to have its Constitution/Bye-Laws/Rules by incorporation of the provisions contained therein i.e. under Section 6. Clause (e) deals with admission of ordinary members and specifically provides that ordinary members should be those persons who are actually engaged or employed in an industry with which the Trade Union is connected. This provision implicitly confines the membership to those who are the workmen of the industry where they are employed.

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.

Thus, leaving the question of law open, these appeals are dismissed.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

**NEW DELHI;
SEPTEMBER 14, 2017.**

ITEM NO.1501
(For Judgment)

COURT NO.6

(REVISED)
SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal Nos. 12843-12844/2017
(Arising out of SLP (C) Nos. 27020-27021/2015)

ALL ESCORTS EMPLOYEES UNION

Appellant(s)

VERSUS

STATE OF HARYANA & ORS.

Respondent(s)

Date : 14-09-2017

This matter was called on for pronouncement of judgment today.

For Appellant(s) Mr. S. Padikh, Adv.
Mr. Pukhrambam Ramesh Kumar, AOR
Mr. Uday Manaktala, Adv.

For Respondent(s) Mr. Jay Kishor Singh, AOR

Mr. Gautam Sharma, Adv.
Mr. Manish Paliwal, Adv.
Ms. Monika Gusain, AOR
Mr. Vikas Kumar, Adv.

Hon'ble Mr. Justice A. K. Sikri pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Ashok Bhushan.

Leave granted.

The appeals are dismissed in terms of the signed non-reportable judgment.

Application for impleadment stands disposed of.

(NIDHI AHUJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

[Signed non-reportable judgment is placed on the file.]

ITEM NO.1501
(For Judgment)

COURT NO.6

SECTION IV

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RECORD OF PROCEEDINGS

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(NIDHI AHUJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

[Signed non-reportable judgment is placed on the file.]