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बुधवार, डिसेंबर १३, १९७८/अग्रहायण २२, शके १९००

MAHARASHTRA LEGISLATURE SECRETARIAT

The following Bill was introduced in the Maharashtra Legislative Assembly on 13th December 1978:—

L. A. BILL No. LIV OF 1978.

A BILL

to amend the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

WHEREAS it is expedient to amend the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, for the purposes hereinafter appearing; It is hereby enacted in the Twenty-ninth Year of the Republic of India as follows, namely:—

1. (1) This Act may be called the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices (Amendment) Act, 1978.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

Short title  
and com-  
mencement.

Amendment of section 5 of Mah. I of 1972. Act") of 1972. 2. In section 5 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the principal Act"), for clause (e), the following clause shall be substituted, namely:—

"(e) to assign work, and to give directions, to the Investigating Officers in the matter of holding secret ballot for determination of support enjoyed by any union as provided by this Act and in the matter of investigation of complaints relating to unfair labour practices."

Amendment of section 9 of Mah. I of 1972. 3. In section 9 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) It shall be the duty of an Investigating Officer to hold secret ballot for determination of support enjoyed by any union when so directed by the Industrial Court and to assist the Industrial and Labour Courts for investigating into complaints relating to unfair labour practices."

Amendment of section 11 of Mah. I of 1972. 4. In section 11 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Any Union (hereinafter referred to as "the applicant union"), having membership of employees employed in an undertaking, may apply in the prescribed form to the Industrial Court for being registered as a recognised union for such undertaking".

Amendment of section 12 of Mah. I of 1972. 5. In section 12 of the principal Act, for sub-sections (2) and (3), the following sub-sections shall be substituted, namely:—

"(2) If no objections are received under sub-section (1), and, if after holding such enquiry in the matter as it deems fit, the Industrial Court is satisfied that the applicant union complies with the conditions specified in section 19, the Industrial Court, shall, subject to the provisions of this section, grant recognition to the applicant union under this Act.

(3) If any objections on any ground other than those referred to in sub-section (3A) or (3B) are received under sub-section (1), from any other union (hereinafter referred to as "the other union") or from the employer or employees and the Industrial Court, after considering such objections, is satisfied that the objections have no substance and that the applicant union complies with the conditions specified in section 19, the Industrial Court shall, subject to the provisions of this section, grant recognition to the applicant union under this Act.

(3A) Where any other union or employer or employees object to the grant of recognition to the applicant union on the ground that the applicant union does not enjoy support of at least thirty per cent. of the total number of employees employed in the undertaking, the Industrial Court shall, if it is satisfied that the applicant union complies with the conditions specified in section 19, cause a secret ballot to be held in the prescribed manner for determining the extent of the support enjoyed by the applicant union. If as a result of such secret ballot, the applicant union secures support of not less than thirty per cent. of the total number of employees employed in that undertaking, the Industrial Court shall, subject to the provisions of this section, grant recognition to the applicant union under this Act.

(3B) Where any other union, which complies with the conditions specified in section 19, objects to the grant of recognition to the applicant union on the ground that it has a larger support of employees employed in the undertaking than that enjoyed by the applicant union and such other union notifies to the Industrial Court its claim to be registered as a recognised union for such undertaking, the Industrial Court shall cause a secret ballot to be held in the prescribed manner for determining the extent of support enjoyed by the applicant union and such other

union and shall, subject to the provisions of this section, grant the recognition to that union under this Act, which secures in such secret ballot a larger number of votes of the employees employed in the undertaking.

(3C) Every union to which a recognition has been granted under this Act shall be issued a certificate of recognition in the prescribed form."

6. In section 13 of the principal Act, in sub-section (1),—

(a) clause (ii) (including the two provisos thereto) shall be deleted;

(b) in clause (vi), for the words "is cancelled; or" the words "is cancelled." shall be substituted;

(c) clause (vii) shall be deleted.

Amendment  
of section 13  
of Mah. I  
of 1972.

7. For section 14 of the principal Act, the following section shall be substituted, namely:—

Substitution  
of section 14  
of Mah. I  
of 1972.

" 14. (1) If any union (hereinafter in this section referred to as 'the contesting union'), at any time, makes an application to the Industrial Court for being registered as a recognised union in place of a union already registered as such for an undertaking (hereinafter in this section referred to as 'the recognised union'), on the ground that it has support of a larger number of employees employed in such undertaking, the Industrial Court shall, if a period of two years has elapsed since the date of registration of the recognised union, call upon the recognised union, by a notice in writing to show cause, within fifteen days of the receipt of such notice by it, as to why the contesting union should not be recognised in its place. An application made under this sub-section shall be accompanied by such fee not exceeding five rupees as may be prescribed:

Recognition  
of other  
union.

Provided that, the Industrial Court shall not entertain any application for recognition of a contesting union, unless a period of one year has elapsed since the date of disposal of the previous application (if any) of that union.

(2) As soon as may be, after the receipt of the application under sub-section (1) the Industrial Court shall cause a notice to be displayed on the notice board of the undertaking, declaring its intention to consider the said application on the date specified in the notice, and calling upon other unions, if any, having membership of employees employed in that undertaking, and the employer and employees affected by the application, to show cause within fifteen days from the date of display of such notice, as to why recognition should not be granted to the contesting union.

(3) If, after considering objections, if any, that may be received under sub-section (1) or (2), the Industrial Court is satisfied that the contesting union, or any other union which has notified to the Industrial Court its claim to be registered as a recognised union for such undertaking, complies with the conditions specified in section 19, the Industrial Court shall cause a secret ballot to be held in the prescribed manner for the purpose of determining the extent of support of employees enjoyed by each of the unions. If the Industrial Court is satisfied that as a result of the secret ballot, any union, other than the recognised union, enjoys support of a larger number of employees employed in the undertaking, then the Industrial Court shall, subject to the provisions of section 12, recognise in place of the recognised union that union which enjoys the largest support of employees employed in the undertaking and issue a certificate of recognition referred to in sub-section (3C) of section 12. On the grant of such recognition to any union other than the recognised union, the recognition and the certificate of recognition issued to the recognised union shall stand cancelled."

Amendment  
of section 15  
of Mah. I  
of 1972.

Insertion of  
section 20A  
in Mah. I of  
1972.

Representa-  
tion of  
employees,  
where there  
is no  
recognised  
union.

8. In section 15 of the principal Act, in sub-section (1), the words, brackets and figures "or on the ground specified in clause (ii) of section 13," shall be deleted.

9. After section 20 of the principal Act, the following section shall be inserted, namely:—

"20A. (1) Where in respect of any undertaking there is no union for the time being recognised under this Act, there shall be constituted an Employees' Representative Committee, consisting of five representatives of the employees employed in such undertaking, elected by them from amongst themselves by a secret ballot caused to be held by the Industrial Court in the prescribed manner. The Committee shall be deemed to be constituted from the date of the declaration of result of the secret ballot. The names of the members of the Committee for the time being in office, shall be displayed by the employer on the notice board of the undertaking.

(2) Where the Committee has been constituted under sub-section (1) in respect of any undertaking, then, notwithstanding anything contained in the Central Act, no employee of such undertaking shall be entitled to be represented in any proceedings under the Central Act (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee is under consideration), except through such Committee, and the decision arrived at, or order made, in such proceedings shall be binding on all the employees in such undertaking:

Provided that, until such Committee is constituted, an employee who is a party to any such proceeding shall be entitled to be represented in the manner prescribed in sub-section (1) of section 36 of the Central Act.

(3) (a) The term of office of the members of the Committee shall be two years from the date of its constitution, or any further period thereafter, until any union is recognised in respect of the undertaking, for which the Committee is constituted:

Provided that, if at any time after the expiry of the said term of two years, the members of the Committee continue in office and not less than two thirds of the total number of employees employed in the undertaking make an application to the Industrial Court for the dissolution of the Committee, the Industrial Court shall, after making such inquiry as it deems fit, direct that the old Committee shall stand dissolved and that in its place a new Committee shall be constituted in accordance with the provisions of this section.

(b) Where any union is recognised for the undertaking during the term of the Committee or where the Committee is dissolved by the Industrial Court, the members thereof shall, notwithstanding anything contained in clause (a), vacate their office from the date on which the certificate of recognition is granted to the union, or as the case may be, from the date on which the Committee stands dissolved.

(4) Any member of the Committee may resign his office by writing under his hand addressed to the Industrial Court and any vacancy occurring on account of the resignation of a member of the Committee or otherwise, shall forthwith be filled by the Industrial Court by holding secret ballot as provided in sub-section (1); and the person so elected shall hold office so long only as the member in whose place he is elected would have held it, if the vacancy had not occurred.

(5) Any act or omission of the majority of the members of the Committee shall be deemed to be the act or omission of the Committee."

Amendment  
of section 23  
of Mah. I  
of 1972.

10. In section 23 of the principal Act, in the *Explanation*, after the words "the Bombay Act" the words, figures and letter "or any Employees' Representative Committee constituted under section 20A of this Act" shall be added.

11. In section 24 of the principal Act,—
- (a) in clause (1), in sub-clause (b), for the words “ the members of the union, ” the words “ the employees employed in the undertaking, ” shall be substituted ;
- (b) in clause (2), in the proviso to sub-clause (g),—
- (i) in paragraph (i), for the words “ the union does not ” the words “ the union, or, as the case may be, the Employees’ Representative Committee, does not ” shall be substituted ;
- (ii) in paragraph (ii), for the words “ the union accepts ” the words “ the union, or, as the case may be, the Employees’ Representative Committee, accepts ” shall be substituted.
12. In section 49 of the principal Act, in clause (i), after the words “ members of any union ” the words “ or of the Employees’ Representative Committee ” shall be inserted.
13. Section 52 of the principal Act shall be deleted.
14. In section 61 of the principal Act, in sub-section (1), after the words “ make rules ” the words “ for any matter which is required to be or may be prescribed by this Act and ” shall be inserted.

Amendment  
of section 24  
of Mah. I  
of 1972.

Amendment  
of section 49  
of Mah. I  
of 1972.

Deletion  
of section 52  
of Mah. I  
of 1972.

Amendment  
of section 61  
of Mah. I  
of 1972.

## STATEMENT OF OBJECTS AND REASONS.

The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, *inter alia*, provides for the recognition of trade unions for facilitating collective bargaining for certain undertakings. Under section 10, the provisions of Chapter III relating to recognition of unions apply to the undertakings to which the Industrial Disputes Act, 1947, applies, but do not apply to the undertakings to which the Bombay Industrial Relations Act, 1946, applies. At present under section 11, a union to be eligible to apply for recognition for any undertaking must have a membership of not less than thirty per cent. of the total number of employees employed in that undertaking. Thus the criteria laid down for eligibility for application for recognition is certain percentage of the membership, and therefore, the Industrial Court is required to decide the issue at the initial stage on the basis of verification of membership.

2. There has been a consistent demand from a large section of the trade union movement that verification of membership is time consuming and suffers from several other drawbacks. For quicker and proper decisions, it has been suggested that the more democratic method of holding secret ballot should be adopted for determining the representative nature of any union claiming the support of a larger number of employees employed in any undertaking. The suggestion has been accepted by Government, and it is therefore proposed to amend the Act suitably, so that the question of recognition of unions may wherever necessary be decided by holding a secret ballot. The main object of the Bill is to achieve this object.

3. The following notes on clauses explain the important provisions of the Bill:—

*Clause 4.*—In view of the adoption of the system of determining the support of employees in any undertaking when required by means of a secret ballot, it is proposed to recast sub-section (1) of section 11 to do away with the requirement of proving membership of thirty per cent. of the total number of employees at the stage of application for recognition.

*Clauses 5 and 7.*—Sub-sections (2) and (3) of section 12 are being replaced by five sub-sections and section 14 is being revised to simplify the procedure for deciding any application for recognition. Where no objections are received or where objections received are not on the basis of support of employees and have no substance, the Industrial Court will grant recognition on being satisfied that the conditions of section 19 are complied with. Where the objections on the basis of support are received, the Industrial Court will satisfy itself by holding a secret ballot that the union has support of not less than thirty per cent. of the total number of employees or that, where another union is contesting, the applicant union or the union already recognised has or has not a larger support. The voting at any such secret ballot shall be by all employees employed in the undertaking, whether they are members of the union or not.

*Clause 9.*—Experience has shown that where there are more than one registered unions, but none commands support of at least 30 per cent. of the employees, or where none of the registered unions apply for recognition as there is no legal compulsion under the Act for seeking recognition, all of them continue to operate in the undertaking and raise disputes. This gives rise to multiplicity of unions and disputes and also leads to inter-union rivalries, jeopardising the industrial peace. With a view to remedying this situation, it is proposed that in any undertaking where there is no recognised union, there shall be constituted an Employees' Representative Committee consisting of five representatives of employees elected by them from amongst themselves by holding a secret ballot. Where the Committee is constituted, no employee shall be entitled to be represented in certain proceedings, except through such committee, and the decision arrived at in such proceedings shall be binding on all employees in the undertaking.

4. The remaining clauses contain consequential or incidental amendments to the Act.

Dated 28th November 1978.

S. S. SHINDE,  
Minister for Labour.

MEMORANDUM REGARDING DELEGATED LEGISLATION.

The Bill involves the following proposals for the delegation of legislative power.

2. *Clause 4.*—This clause empowers Government to prescribe by rules the form of application by any union for being registered as a recognised union.

3. *Clauses 5 and 7.*—New sub-sections (3A) and (3B) of section 12 and sub-section (3) of section 14 read with sub-section (1) of section 61 empower Government to make rules to prescribe the manner in which the Industrial Court shall hold the secret ballot for determining the support enjoyed by any union.

New sub-section (3C) of section 12 empowers Government to make rules to prescribe the form in which a certificate of recognition shall be issued.

Sub-section (1) of section 14 provides for prescribing a fee not exceeding five rupees which should accompany an application by any union for being registered as a recognised union in place of a union already registered as such.

4. *Clause 9.*—Under sub-section (1) of section 20A, rules will be made by Government to prescribe the manner in which the Industrial Court shall hold secret ballot for elections to the Employees' Representative Committee, which may be the same as for determining support of employees for any union.

5. All the above proposals are of a normal character.

G. S. NANDE,

Secretary,

Nagpur, dated the 13th, December 1978.

Maharashtra Legislative Assembly.