

Registration and Recognition of the Trade Unions

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Trade Union Act was amended in the year 2001 which came into effect from 9th January 2002 and there has been a change in the requirements for registration of a trade union.

According to the new provisions of the Act, no trade union of workmen shall be registered unless at least 10% or 100 of the workmen, whichever is less, further subject to minimum of seven workmen, engaged or employed in the establishment or industry with which it is connected are members of such Trade Union on the date of making the application.

The application for registration should accompany the details of members such as (1) Name (2) occupation (3) address of place of work of the member.

After making the application and before the registration, if 50% or more workmen withdrawn from the membership, the Union cannot be registered.

Registered Trade Union of workmen shall at all times continue to have not less than 10% or 100 of the workmen, whichever is less, subject to minimum of seven, engaged or employed in an establishment or industry with which it is connected, as its members.

Thus whenever the Labour Department conducts the verification of membership among the registered trade unions, it is the responsibility of the Registrar of Trade Unions to cancel the registration of a Trade Union which has membership of less than 10% or 100 of the workmen as the case may be.

The Act has also prohibited persons holding an office of profit and also the council of ministers to be the executive and or office bearers of a Trade Union. An office of profit means a position that brings to the person holding it some financial gain or advantage or benefit and the quantum of such gain or remuneration is immaterial.

The Act also disqualifies a member of the union to be the office-bearer or executive of the union if he has been convicted by a Court in India of any offence involving moral turpitude and sentenced to imprisonment. Such person can only become an executive or office bearer of a union only after completion of 5 years period after his release.

The Madras High Court (2010) in the matter of M LakshmananVs ICICI Bank Employees Union held that conviction and sentence imposed on an employee of the Bank under section 138 of Negotiable Instruments Act can be considered as an offence involving moral turpitude and there by not entitled to hold the post of General Secretary of the Union.

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The Trade Union members or the office bearers do not enjoy any immunity if they indulge in acts which constitute misconduct. Leadership has no right to indulge in acts which are opposite to law and they are liable for punishment under general law as well.

The Madras High Court in the matter of Indian Bank Vs Federation of Indian Bank Employees held that all workmen, guilty of wrongfully restraining any person belonging to the management or wrongfully confining him during a gherao are guilty under Section 339 or 340 of Indian Penal Code and have committed cognizable offences, for which they are liable to be arrested without warrant and punishable under Section 120A of IPC and is not saved by Section 17 of the Trade Union Act.

The Supreme Court in the matter of UshaBrecoMazdoorSanghVsUshaBreco Ltd [Air 2009 994] held that a union leader has no immunity from misconduct since he is also bound to be disciplined.

The management has every right to debar the entry of a trade union leader who is preaching violence either among the workmen or against the management. The Bombay High Court in the matter of Pudumjee Pulp & Paper Mills KamgarSanghVsPudumjee Pulp & Paper Mills [2008 LLR 860] confirmed this proposition.

The free ingress and egress of men and materials is a fundamental right of the owner of the property and hence the Unions or the workmen have no right to obstruct such movement to conduct its business. The Rajasthan High Court in the matter of Ajmer District Forest Department Asst Employees Union Vs State of Rajasthan [2006 LLR 283] held that a Trade Union has no right to cause obstruction to ingress or egress by staging demonstration since for redressal of grievances, they have the forum as under the law.

The union office bearers are workmen first and the role and responsibility of the management of the union is next to his primary duty of performing the work at the factory. Hence all the rules, regulations and responsibilities of a workman are applicable to them as well. The Himachal Pradesh High Court in the matter of Mohan Meakins Ltd Vs President Mohan Meakins Staff Union [2012 LLR 1040] held that the President of the Union cannot avoid transfer and he is required to report to duty at the new place of work.

The Trade Union Act has not given any authority or powers to the executive or the office bearer of a trade union to conduct trade union activities while on duty within the premises of the factory. The trade union activities are to be conducted outside the working hours and not during the working hours. The Andhra Pradesh High Court in the matter of Singareni Collieries Vs Industrial Tribunal [2012 LLR 1162] held that Trade Union activities are not justified while on duty.

The only differentiation between a workman and the executive or office bearer of a trade union has been made in the Industrial Disputes Act under certain circumstances for a limited number of trade union office bearers, who are known as 'protected workman'. The Industrial Disputes Act has

provided protection from discharge or dismissal of the executive or other office bearer of a registered trade union

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who are declared as protected workman. During the pendency of an industrial dispute before conciliation or tribunal or labour court, the employer should not discharge or dismissal a protected workmen without permission from authority before whom the dispute is pending.

However, an office bearer or an executive of a registered trade union will not become a protected workman automatically. The registered trade union has to follow the procedure laid down under the Act. In accordance with the ID Rules, every registered trade union is required to submit the list of name of the executive or office bearers of the union who should be considered as protected workman on or before 30th April every year. Within fifteen days of receipt of the request from the union, the employer has to communicate the approved list of protected workman and it shall be valid for a period of twelve months from the date of communication. The number of protected workman shall be one percent of the workmen strength subject to a minimum of five and maximum of one hundred. Where there are more than one registered trade union in an industrial establishment, the protected workman for each of the registered trade union shall be in accordance with the membership of that union.

It has been the most common experience of the managements that soon after the registration of a trade union, most of the leaders will come up with a plan to hoist a flag in or near the factory premises. The Kerala High Court in the matter of Kerafibertex International P Ltd Vs Kerafibertex Employees Association [2009 LLR 985] held that Trade Unions have no right to hoist flags in the property of the Management. If the flag is hoisted outside the property of the Management, then the flag is said to have hoisted in a public place where the District Collector and the police will have authority not to permit such unauthorized activities.

The Trade Union Act 1926, deals only with the registration of Trade Unions. The Act has not provided any provisions with regard to the recognition of a trade union or declaring a trade union as a sole bargaining agent. However some State Governments such as Madhya Pradesh, Maharashtra and West Bengal made certain amendments to recognize the union as a sole bargaining agent. In the State of Andhra Pradesh and Telangana there is no such provision and hence the recognition of the union is based on the acceptance of the code of discipline by the registered trade unions and verification of membership by the Labour Department.

At the central level, the 16th session of the Indian Labour Conference held at Nainital in May 1958 adopted the following set of criteria under the Code of Discipline for the recognition of trade unions:

1. Where there is more than one union, a union claiming recognition should have been functioning for at least one year after registration. Where there is only one union, this condition would not apply.

2. The membership of the union should cover at least 15 per cent of the workers in the establishment concerned. Membership would be counted only those who had paid their subscriptions for atleast three months during the period of six months immediately preceding the reckoning.

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3. A union may claim to be recognized as a representative union for an industry in a local area if it has a membership of at least 25 percent of the workers of that industry in that area.
4. When a union has been recognized, there should be no change in its position for a period of two years.
5. In case of several unions in an industry or establishment, the one with the largest membership should be recognized.
6. A representative union for an industry in an area should have the right to represent the workers in all the establishments in the industry, but if a union of workers in a particular establishment has a membership of 50 percent or more of the workers of that establishment, it should have the right to deal with matters of purely local interests, such as, for instance, the handling of grievances pertaining to its own members. All other workers who are not members of that union might either operate through the representative union for the industry or seek redress directly.
7. In the case of trade union federations not affiliated with any of the four central labour organizations, the question of recognition would have to be dealt with separately.
8. Only unions which observed the Code of Discipline would be entitled to recognition.

In accordance with the code of discipline the verification of membership of all the registered trade unions in an establishment is being conducted by the Labour Department authorities and the trade union which has the highest membership is declared as the recognized union for a period of two years.

In accordance with the provisions of the Act, in an industrial establishment, there can be many registered trade unions. The Supreme Court has time and again examined the matter and held that the rights and privileges vested in a non-recognized association are limited to espousing the grievances of individual members relating to their service conditions and representing them in domestic or departmental enquiries held by the employer and not proceeding before the conciliation officer, labour court, industrial tribunal or arbitrator. There is no right in the non-recognized union to participate in discussions relating to general issues concerning all workmen. [Chairman SBI Vs All Orissa S B Officers Association, AIR 2002 SC 2279]

Once there is a representative union, which in the present case, is the Labour Union, it is difficult to see the role of the Workers' Union. If there are number of trade unions registered under the Trade Union Act, not entitled to be registered as "representative unions" and they raise disputes, industrial peace would be a far cry. [National Engg Industries Ltd Vs State of Rajasthan AIR 2000 SC 469].

Today most of the industrial establishment has multiplicity of the unions and hence the management should in their own interest provide the rightful place to the recognized union and should not encourage minority or unrecognized unions. Dealing with unrecognized unions will create more unions and the entire process of employee relations will be more complex and difficult to achieve the organizational objectives.

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