

## **Charu Khurana: fair end, flawed means**

- **Prashant Narang** with inputs from **Aesa Dey**

In [Charu Khurana v. Union of India, 2014 SCC Online SC 900](#), a Supreme Court Bench comprising of Dipak Misra and U.U. Lalit, JJ held that the bye-laws of Cine Costume Make-up Artists and Hair Dressers Association ('Association') prohibiting women from practising as make-up artists and requiring residency for over 5 years in Maharashtra violate fundamental rights enshrined in the Constitution as well as statutory provisions. The Court directed the bye-laws to be quashed, and the police administration to prevent any harassment of female artists by the Association.

### **Facts and Issue**

The simple issue in this matter was: whether the Association can: (i) prohibit female artists to practice as 'make-up artists' (Clause 4 of the Association byelaws); and (ii) have a domicile requirement, i.e. the person should be residing in Maharashtra for past five years (Clause 6 of the Association byelaws), to become a member of the Association. The Association is registered as a Trade union with the Registrar of Trade Unions under the Trade Unions Act, 1926 ('Act').

### **Analysis**

It is surprising that the Hon'ble Court entertained the petition under Article 32 instead of invoking the doctrine of alternative remedy as it usually does.<sup>1</sup> Going by precedents, there is no reason why this case too could not have been dealt by the Bombay High Court or any other appropriate judicial forum. Secondly, since the Association is not 'State' or 'State instrumentality' under Article 12 of the Constitution of India, was it a fit case at all for writ jurisdiction? The Court justifies its jurisdiction on the ground that the bye-laws of the Association being a trade union registered under the Act must not violate the mandate of the said Act or the constitutional commands. The Court found clause 4 of the Association bye-laws breaching section 21 of the Act. This reasoning is flawed for three reasons:

- i. Mere registration under the Act does not change the character of an organisation from private to State and make it automatically amenable to Writ jurisdiction unless article 17, 23 and 24 are involved.<sup>2</sup>
- ii. If the Association being a trade union owed an explanation to the Trade Union, even then the matter should first go to the Registrar of Trade Union and then to the high court, if needed. The registrar has the power of cancelling the registration of the trade union.
- iii. Section 21 of the Act, as an exceptional provision, allows trade unions to have children below 15 years of age as members who can even execute instruments. The said section clearly uses the phrase 'subject to any rules of the trade union to the contrary' to indicate vast freedom trade unions have got under the said Act to frame their membership policy.<sup>3</sup> No where the Act mandates compliance with Part-III or Part-IV of the Constitution for trade unions that

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<sup>1</sup> *Jaipur Shahar Hindu Vikas Samiti v. State of Rajasthan and Ors.*, (2014) 5 SCC 530

<sup>2</sup> *S.D. Siddiqui v. University of Delhi And Ors.*, 2006 (88) DRJ 504; see also *Zoroastrian Co-operative Housing Society Ltd. And Anr. V. District Registrar, Co-op. Societies (Urban) and Ors.*, AIR 2005 2306; Except Article 17, 23 and 24 expressly are not limited to State only.

<sup>3</sup> *Bokajan Cement Corporation Employees' Union v. Cement Corporation of India Ltd.*, AIR 2004 SC 245

State is obliged to do.<sup>4</sup> The Court's reasoning that since there is no other criterion fixed in section 21, hence there cannot be any other criterion is flawed for the criteria is obviously not exhaustive.

Instead of asking the question whether clause 4 violates the Trade Union Act in any way, the Court should have asked the question how the Trade Union – a private union could behave as a sovereign licensing body and stop the petitioner to practice as a make-up artist. The petitioner should have approached the Competition Commission of India (CCI), for the rules and conduct of the Association were clearly anti-competitive under Section 3 / 4 of the Competition Act, 2002 towards new entrants. Please see this CCI order [here](#) with similar facts.

On the issue of Clause 6 dealing with residence in Maharashtra for a minimum period of five years to be eligible, the Court relied upon *Pradeep Jain v. Union of India*<sup>5</sup> where it was held that place of residence should not be taken into account when considering admission to any educational course, training facility, specialty or employment. It must be noted here that the Respondent Association does not fall into any of these categories and is merely a private union.

Ideally, the Court should have referred the matter to the Competition Commission of India and in the interim, directed the police administration to respond to the Petitioner's complaints of harassment by the Association, in order to ensure that the Petitioner could work freely.

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<sup>4</sup> *K.V. Sridharan & S. Ragupathy v.S. Sundaramoorthy and The Principal Postmaster General*, (2009) 3 MLJ 1320

<sup>5</sup> *Pradeep Jain v. Union Of India* (1984) 3 SCC 654