MAHARASHTRA GIRNI KAMGAR UNION

v.

S. BHATTACHARJI AND ORS.

AUGUST 31, 1999

[S.B. MAJMUDAR, M. SRINIVASAN AND U.C. BANERJEE, JJ.]

Labour Laws :

Bombay Industrial Relations Act, 1946 :

Sections 15(b) (ii), 3(25) 13(1) and 16—Representative Union—Registration—Cancellation of—On ground that membership fell below the statutory minimum under S.13(1)—Number of members—Computation of—Subscription—Arrears of—For a period of more than three calendar months—Held : "More than three calendar months" cannot be equated with "three calendar months"—It would be four calendar months or more—In the circumstances of the case, membership of the representative union has not fallen below the statutory minimum—Hence, application of rival union for cancellation of registration of representative union, rightly rejected—Trade Unions Act, 1926.

Section 15—Representation union—Registration—Cancellation of—Procedure to be followed—Held : Is the one provided under S.15 itself and not the one provided under R.28-A of the Rules framed under the BIR Act.

Interpretation of Statutes :

Welfare Legislation—Rules of interpretation—Held : Interpretation, which fructifies, not which frustrates, the benevolent scheme, has to be preferred.

Words and Phrases :

"Period of more than three calendar months"—Meaning of—In the context of proviso to S.3(25) of the Bombay Industrial Relations Act, 1946.

The appellant was an union registered under the Trade Unions Act, 1926. Its members were workmen engaged in cotton textile industry. Respondent No. 4 was registered as a representative union in the same

A industry in the same area under Section 13 of the Bombay Industrial Relations Act, 1946.

The appellant-union moved an application on 24-3-1982 before the Registrar of Unions for cancellation of the registration of respondent No.4 union as a representative union under Section 15(b)(ii) of the BIR Act on
B the ground that for the relevant period of continuous three calendar months the membership of respondent No. 4 union had fallen below the requisite 25% of the workmen in the textile industry in that area. The Additional Registrar rejected the said application. In appeal, the Industrial Court, on an interpretation of Section 3(25) of the BIR Act read with Section 15
C thereof, held that the membership of respondent No. 4 union had not fallen below the minimum required for continuance of its registration as a representative union. The High Court upheld this order. Hence this appeal.

On behalf of the appellant-union it was contended that for the purpose of its application dated 24-3-1982 the relevant continuous three calendar
D months period consisted of December 1981, January 1982 and February 1982; that the members of respondent No. 4 union who had not paid their subscription for December 1981 were 61,509; that on a correct interpretation of Section 3(25) of the BIR Act, a workman who had not paid his subscription for a particular month by the next month would be in arrears for more than one month; that the said 61,509 workmen who had not cleared their arrears
E for December 1981, even by the end of February 1982, had to be treated to be in arrears of subscription for a period of more than three calendar months, namely, December 1981, January 1982 and February 1982; that these 61,509 members would be deemed not to be the members of respondent No. 4 union for the purpose of considering continued representative status
F of respondent No. 4 union, that they were out of consideration for computing 25% membership of respondent No. 4 union from all the requisite three months and, therefore, the appellant's application moved in March 1982 was required to be allowed.

Dismissing the appeal, the Court

G

HELD : 1.1. By the deeming provision as per the proviso to Section 3(25) of the Bombay Industrial Relations Act, 1946 existing prior to 1965, the legislature treated deemed arrears of subscription for three calendar months or even more to be a sufficient disqualification for a person to be continued on the roll of membership of the union for subsequent months.
H However, the said proviso has undergone a sea-change from 1965 and as per

present form in which it exists on the statute book, a person would be deemed to be a non-member only if his subscription is in arrears for a period of more than three calendar months within the block of six earlier calendar months. Therefore, it is not possible to agree with the contention of the appellant that period of more than three calendar months as mentioned in the proviso pursuant to the amendment in 1965 can be said to have set in once it is found that for each of the preceding three calendar months subscription was not paid by the end of such month and the moment three calendar months are over without payment of the due subscription for each of these months, on the stroke of 12 O' clock midnight of the third calendar month the period of more than three calendar months can be said to have started. It is obvious that the concept of arrears for a calendar month as laid down by the explanation takes in its sweep the conduct of a member who does not pay the subscription for the concerned calendar month by the end of the month. He has full play and *locus paenitentiae* to pay up the subscription for the month concerned at any time from first till the last day of such calendar month. The interpretation canvassed by the appellant would render the phrase "more than three calendar months" totally otiose. It is axiomatic that 'more than three calendar months' cannot be equated with 'three calendar months'. Further, it is also interesting to compare the phraseology employed by the legislature in Sections 13 and 16 of the BIR Act wherein an applicant union for getting registration as a representative union under Section 13 or the rival union to displace such a representative union by applying under Section 16 has to show its requisite 25% membership of the workmen engaged in that industry for a continuous period of three calendar months immediately preceding such application. Continuous period of three calendar months would naturally start with the first month and end with the third month. Such phraseology is conspicuously absent in the proviso to Section 3(25) as it stands on the statute book after 1965. [109-B-H; 110-A-E]

2.1. The membership in question is of persons who are mostly illiterate labour force working in various textile mills and other industries governed by the BIR Act. They are largely drawn from rural areas and come from long distances to eke out their livelihood in search of maintaining themselves and the members of their family. Such poor and illiterate persons who join the unions which function for them in a representative capacity for ventilating their grievances must be permitted to be duly represented by the unions of their choice. The interpretation, which fructifies this underlying purpose of legislation, has to be preferred. The representative union of such employees, by the process of collective bargaining on their behalf with the mill owners'

A association, can bring about appropriate settlements of industrial disputes while dealing with better financially and socially placed unions of employers who naturally have larger economic resources and can get able assistance of competent legal and financial brains. [110-G-H]

B 2.2. The BIR Act is based on the principle of industrial democracy. Any provision of the Act, which tries to cater to the needs of these illiterate masses of workmen, has to be so interpreted as to subserve the legislative intent underlying the principle of industrial democracy and collective bargaining guaranteed by the Act. Any interpretation which fructifies such benevolent scheme and which guarantees continuance of membership of C such illiterate masses of workmem has to be preferred to the interpretation which frustrates the scheme underlying such benevolent enactment. The deeming fiction contained in the proviso to Section 3(25) for dismembering a person has, therefore, to be raised only on a strict construction of the provision and not on a liberal construction of such a disabling provision. However, on the setting of Section 3(25) along with the proviso and the D explanation even two interpretations are not reasonably possible.

[111-C-D]

3. The emphasis on the words "period of more than three calendar months" does not advance the case for the appellant further for the simple E reason that the phrase "period of more than three calendar months" deals with the time span during the relevant period of six calendar months preceding the month in question within which the conduct of the member concerned has to be scrutinised. That would not require a continuous period of more than three calendar months. On the express language of the proviso as read with the explanation it has to be held that before a member can be treated to be F a deemed non-member for December 1981 it has to be shown that during the six months preceding December 1981 i.e. from June 1981 till the end of November 1981 he was at any time in arrears of subscription for more than three calendar months, meaning thereby for four calendar months or even more. But if it is shown that he was in deemed arrears as provided by the G explanation of the proviso for only three months or less and not for a longer period than three calendar months, then he cannot be deemed to be a non-member for December 1981. It has also to be visualised that there is a clear finding of fact reached by the appellate court, namely, the Industrial Court and as confirmed by the Single Judge and the Division Bench of the High Court that 61,509 members of respondent No. 4 union who had not paid H subscription for December, 1981 by the end of that month were not in

arrears for even three calendar months, during the period June 1981 to November 1981. These 61,509 workmem members could not, therefore, be treated to be non-members of respondent No. 4 union only because in the month of December itself they had not paid up subscription by the end of December 1981. On a conjoint reading of the main provisions of Section 3(25) and the proviso and the explanation thereof, the High Court was justified in confirming the view of the appellate court that these 61,509 workmen had to be added back to the figure of 49,670 workmen who were members of respondent No. 4 union in December 1981 and who had paid up the subscription in time. Once this figure is added, total membership figure obviously goes beyond the requisite 25% minimum membership for December 1981. It becomes, therefore, obvious that application of the appellant for cancellation of registration of respondent No. 4 union under Section 15 of the BIR Act would fail. [113-B-H; 114-A-E]

4. The procedure to be followed by the Registrar under the BIR Act while considering the application under Section 15 for cancelling the registration of a representative union duly registered under the BIR Act earlier, is the one provided under the Section itself and not under R 28-A of the Rules framed under the BIR Act. It leaves to the discretion of the Registrar to conduct such inquiry as he thinks fit in this connection and he has to decide the application after issuing show cause notice to the union whose registration is sought to be cancelled. [102-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2473 of 1987.

From the Judgment and Order dated 18.7.86 of the Bombay High Court in A. No. 685 of 1984.

S.J. Deshmukh, Ashok Kumar Gupta and Farukh Rashid for the Appellant.

Ashok H. Desai, Ms. Reema Bagga and Jay Savla for the Respondent No. 3.

Bhimrao Naik, Kailash Vasdev, Ms. Nayana Buch and S. Varma for the Respondent No. 4.

Mrs. B. Sunita Rao for the Respondent Nos. 5-6.

The Judgment of the Court was delivered by

S.B. MAJMUDAR, J. This appeal, on certificate of fitness granted by the High Court of Bombay, brings in challenge the decision rendered by the

A Division Bench of the High Court in Appeal no. 685 of 1984 decided on 18th July, 1986. It raises the question of correct interpretation of Section 3(25) of the Bombay Industrial Relations Act. 1946 (hereinafter referred to as the 'BIR Act'). The said provision defines the term 'Member' of a trade union which is registered under the BIR Act. In order to appreciate the nature of the controversy centering round the aforesaid question a few introductory facts B deserve to be noted at the outset.

BACKGROUND FACTS :

The appellant is a union registered under the Trade Unions Act, 1926. C It is functioning at Greater Bombay and seeks to cater to the problems of its members who are workmen engaged in cotton textile industry situated therein. Respondent No. 4 is duly registered as a representative union in the cotton textile industry for the local area of Bombay under the provisions of Section 13 of the BIR Act. It is registered as a representative union on the basis that it enjoyed for the whole period of three calendar months at the relevant time D the requisite 25% and more membership of workmen engaged in various cotton textile mills in the city.

The appellant union on 24 March, 1982 moved an application before the Registrar functioning under the BIR Act for cancellation of the registration E of respondent No. 4 union as a representative union of workmen in the textile industry for the local area of Bombay as per the provisions of Section 15(b)(ii) of the BIR Act. It was contended that for the relevant period of continuous three calendar months the membership of the respondent No. 4 union had fallen below the requisite 25% of the workmen in the textile industry in Bombay and hence its registration was required to be cancelled. Initially, the F said application was summarily rejected by the Additional Registrar by holding that the membership of respondent No. 4 for the period of continuous three calendar months had not fallen below the minimum. The appellant challenged the said order by filing a Writ Petition No. 856 of 1982 in the Bombay High Court. The Additional Registrar thereupon withdrew his order rejecting the G application of the appellant as the High Court had directed appropriate inquiry to be made in this connection. Thereafter the Additional Registrar of Unions functioning under the BIR Act by his Order dated 4 November, 1982 after issuing appropriate show cause notice to respondent No. 4, though having held that the membership of respondent No. 4 had fallen below the minimum required for registration i.e. 25% for the concerned months, declined to cancel H the said registration on the ground that during the relevant three months

there was a strike in the textile industry in Bombay and, therefore, the workers could not pay up their subscription. The said Order of the Additional Registrar of Unions resulted in two cross appeals before the Industrial Court, Maharashtra at Bombay. The Industrial Court, after bearing the parties, came to the conclusion on an interpretation of Section 3(25) of the BIR Act read with Section 15 thereof that the membership of respondent No. 4 union had not fallen below the minimum required for continuance of its registration as a representative union. Resultantly, the appellant's application under Section 15 was dismissed. Being aggrieved by the said decision of respondent No. 2 herein i.e. the Industrial Court, the appellant once more approached the High Court in Writ Petition No. 805 of 1983. Learned single Judge of the High Court dismissed the writ petition and confirmed the order dated 23rd/24th April, 1983 of respondent No. 2. The appellant carried a further appeal before the Division bench of the High Court being OOCJ Appeal No. 685 of 1984. The Division Bench of the High Court by the impugned judgment dated 18 July, 1986 dismissed the said appeal agreeing with the interpretation put up on Section 3(25) of the Act by the Industrial Court as well as by the learned single Judge. As noted earlier, on a certificate of fitness granted by the Division Bench of the High Court this appeal has reached this Court.

RIVAL CONTENTIONS :

Learned counsel for the appellant vehemently contended placing reliance on the relevant provisions of the BIR Act including the definition section of "Member" as laid down in Section 3(25) there of that the interpretation put forward by the Division Bench of the High Court as well as by the learned single Judge and in turn by the Industrial Court is not a correct one. He submitted that as the appellant had moved the application under Section 15 of the BIR Act for cancelling the registration of respondent No. 4 representative union on 24 March, 1982, the relevant continuous three calendar months period wherein respondent No. 4's membership had to be scrutinised consisted of December, 1981, January, 1982 and February, 1982. That it was found as a matter of fact by the Additional Registrar on remand from the High Court that for the relevant three months, figures of membership of respondent No. 4 union had fallen much below the requisite 25% of membership. That during this relevant period total strength of workmen working in the textile industry in different mills in Greater Bombay was 2.25 lakhs; 25% thereof which will be the requisite membership, before respondent No.4 can be treated to have continued as a representative union under the Act would, therefore, work up to 56,250 while it was found as a matter of fact by the inspection team

A appointed by the Additional Registrar which went into the matter that the figures of membership of respondent No. 4 for the relevant three months projected the following picture:

December, 1981	:	49, 670
B January, 1982	:	40, 902
February, 1982	:	5, 080

That it was further found by the inspection team that those members of respondent No. 4 who did not pay their subscription for the aforesaid relevant C three months were as under:

December, 1981	:	61, 509
January, 1982	:	58, 852
D February, 1982	:	74, 904

It was, therefore, contended that as respondent no. 4's membership was less than 25% minimum requisite for being recognised as a representative union of workmen in the textile industry in Bombay for all the aforesaid three relevant months, the appellant's application for cancellation of respondent no. E 4's registration was required to be allowed as laid down by Section 15(b)(ii) of the BIR Act. In this connection, it was submitted that the Division Bench of the High Court had wrongly taken the view that only because in the month of December, 1981, 61,509 workmen had not paid their subscription for that month they could not be treated as non-members as it was found that they were not in arrears for more than three months in the block period of six F months preceding December, 1981. "Hence, this number of 61, 509 workmen had to be added back for computing the membership of respondent no. 4 union for December, 1981 and if that took place, the membership of respondent no. 4 union for that month would far exceed 25% minimum required for continuing its registration. It was similarly argued by learned counsel for the G appellant that the High court had for the same set of reasoning erred in adding up the number of employees who were in arrears for January, 1982 to the figure of those who had paid up their subscription for January, 1982. He, however, fairly conceded that if in fact for any of the requisite three months, namely, December, 1981, January, 1982 and February, 1982 respondent no. 4's membership had actually exceeded 25% for one month or more out of these H three months then respondent no. 4's registration could not be cancelled

under Section 15(b)(ii) of the BIR Act as cancellation could be ordered only if for the entire continuous period of three months, namely, December, 1981 to February, 1982 such membership had fallen below the requisite 25% of the work force of the textile industry in Bombay city. His contention, however, was that on a correct interpretation of Section 3(25) of the Act defining "member" of a trade union, it ought to have held that when 61,509 workmen had admittedly not paid subscription for December, 1981, by January, 1982 they would be in arrears for a period of more than one calendar month. They had admittedly not paid the arrears for December month even by the end of January, 1982. Therefore, by the beginning of February, 1982 they were in arrears for a period of more than two calendar months. And when by the beginning of March, 1982 they had not cleared the arrears of December, 1981, even by the end of February, 1982, these workmen had to be treated to be in arrears of subscription for a period of more than three calendar months, namely, December, 1981, January, 1982 and February, 1982. Therefore, they would be deemed not to be members of the respondent no. 4 union for the purpose of considering continued representative status of respondent no. 4 union. That they were deemed not to be such members for all the aforesaid three months. Hence, they were out of consideration for computing 25% membership of respondent no. 4 from all the requisite three months. Therefore, the appellant's application moved in March, 1982 was required to be allowed. He, however, fairly stated that he did not support the contention canvassed by his learned counterpart Shri Damania, who appeared for the appellant union before the Division Bench of the High Court, namely, that if a workman did not pay his subscription on or before 31st December, 1981, he cannot be construed to be a member for that month and there would remain no occasion for invoking the proviso to Section 3(25) for deciding his status as a member. However, his submission was that even if the proviso is read harmoniously with the main part of Section 3(25) of the BIR Act even then once it is found that for a continuous period of three calendar months a workman was in arrears may be for even one of the calendar months during that period, by the end of the period of three calendar months on the very next date or even at the stroke of midnight of the end of the third calendar months such workman had to be treated to be in arrears for a period of more than three calendar months and consequently, he will be deemed not to be a member of the union whose membership was claimed by him. He, therefore, submitted that on a correct interpretation of the main part of Section 3(25) of the Act read with the proviso and the explanation attached thereto, it has to be held that respondent no. 4 had ceased to have the requisite 25% membership of the working force in the textile industry in the city of Bombay for the relevant

A three months and as it was not found that it had the requisite 25% membership at least in May, 1982 when show cause notice was issued to the respondent no. 4 union, the inevitable result was that it had ceased to be a representative union of the employees working in the textile industry at the relevant time and its registration was liable to be cancelled.

B On the other hand, learned senior counsel Shri Desai appearing for respondent no. 3 herein, i.e. the Bombay Mill Owners' Association and learned senior counsel Shri Bhimrao Naik appearing for respondent no. 4 union supported the interpretation put forward by the Division Bench of the High Court. It was contended that the Division Bench of the High Court in C the impugned judgment had rightly come to the conclusion that as the appellant had moved the application for cancellation of registration of respondent no. 4 in March, 1982, the relevant three months for which inquiry was to be held by the Registrar comprised the continuous period from December, 1981 to February, 1982. That even if for one of these months the membership of respondent no. 4 had crossed the minimum requirement of D 25%, the appellant's application was liable to be dismissed as it would not satisfy the requirement of continuous fall of membership below 25% for each of these months. That a clear finding of fact was arrived at by the Industrial Court in appeal that for the month of December, 1981 and even for the month of January, 1982 out of the aforesaid relevant three months, respondent no. E 4's membership could not be said to have fallen below the minimum 25% as those workmen-members who had not paid arrears for two months were not found to be in arrears for a period of three months and more during the period of six months immediately preceding these two months i.e. December, 1981 and January, 1982 and consequently, they were rightly added back to the number of members who had actually paid subscription for these two months. F It was submitted that on a correct interpretation of Section 3(25) of the Act read with the proviso and the explanation, it had to be appreciated whether the concemed member of the union was in arrears of subscription for a period of three months or more during the block period of six months preceding the given month for which the inquiry was to be made. Hence, that inquiry had G to be projected backwards for a period of six months immediately preceding the month in question. Taking the first month, namely, December, 1981 it was submitted that six months immediately preceding December, 1981 would consist of the period comprising June, 1981 to November, 1981. That as per Section 3(25) read with the proviso and the explanation if it was found that the concerned workman had not paid his subscription and was in arrears for more H than three calendar months during the period from June, 1981 to November,

1981 then only he would be deemed not to be a member of the union in December, 1981. It was emphasised that the legislature had advisedly used the terminology "if his subscription is in arrears for a period of more than three calendar months during the period of six months immediately preceding". It was submitted that when the question of membership was on the anvil of scrutiny for the first month of December, 1981, it had to be seen whether the concerned workman had not paid his subscription and was, therefore, in arrears for more than three calendar months falling within the period of June, 1981 to November, 1981. That there was a clear finding of the Industrial Court as confirmed by the High Court that the members of respondent no. 4 union totalling up to 61,509 though had not paid subscription for December, 1981 had not kept their subscription in arrears for more than three calendar months during the period June, 1981 to November, 1981 and therefore, they could not be deemed to be non-members of respondent no.4 union in December, 1981. It was submitted in the light of the aforesaid finding of fact which obviously could not be challenged in the present proceedings that these 61,509 workmen were rightly added back to the figure of 49,670 workmen-members who had paid their subscription for December, 1981 and once that happened respondent no. 4 union could not be said to have fallen below the 25% of requisite membership i.e. 56,250 for that month. It was further submitted by learned senior counsel for respondents that once that conclusion is reached, the result becomes inevitable that the appellant's application becomes liable to be rejected and accordingly, was rightly rejected by the authorities functioning under the BIR Act and that decision was rightly confirmed in the first instance by the learned single Judge and subsequently by the Division Bench by its impugned judgment.

CONSIDERATION OF THE QUESTION IN CONTROVERSY:

In the light of the aforesaid rival contentions, we now proceed to address ourselves to the moot question posed for our consideration. Before we deal with the same, it would be appropriate to have a look at the relevant statutory scheme holding the field. Section 13(1) of the BIR Act deals with the question of registration of trade union of employees engaged in an industry governed by the said Act. As per the said provision, if a union of workmen satisfied the registering authority that for a continuous period of three calendar months immediately preceding the date of its application for registration as a representative union it had the membership of not less than 25% of the total number of employees employed in such an industry in the local area, it became entitled to be registered as a representative union under

A the BIR Act. It is not in dispute between the parties that as early as in 1958, respondent no.4 satisfying this statutory requirement, got registered as a representative union of workmen employed in the textile industry in the city of Bombay and, accordingly, it continued to function as such thereafter and had entered into many settlements under the BIR Act with the textile mill owners. It is the appellant union which, it was alleged, had given a strike call B which resulted into partial strike from October, 1982 in cotton textile industry in Bombay and which became almost a cent per cent strike from January, 1982 and which lingered on for a couple of months and years thereafter. For considering the grievance of the appellant rival union that respondent no. 4 had become liable to be de-recognised as a representative union, as noted C earlier, it has to be seen whether for the relevant three months i.e. from December, 1981 to February, 1982 as well as for the month of May, 1982 when show cause notice was issued to respondent no.4 union, its membership of employees working in textile industry in Bombay had fallen below the requisite 25% in each of these months. It becomes, therefore, at once clear that if out of these four months even for one month the membership of respondent no. D 4 meets the requirement of 25% or more, the appellant's application would naturally fail. For deciding this question, it becomes necessary to have a look at the definition of the term 'member' of the union as defined in Section 3(25) of the BIR Act. As the entire controversy revolves round the correct interpretation of this definition, it is appropriate to extract the same *in extenso* E as under:

> "Member" means a person who is an ordinary member of a union and who has paid a subscription of not less than [twenty five paise] [per calendar month];
>
> F Provided that no person shall at any time be deemed to be a member if his subscription is in arrears [for a period of more than three calendar months during the period of six months immediately preceding such time].
>
> [Explanation : A subscription for a particular calendar months shall, G for the purposes of this clause, be deemed to be in arrears if such subscription is not paid by the end of the calendar month in respect of which it is due];"

The other relevant provision of the Act to which our attention was invited by learned counsel for the appellant in support of his contention is Section H 15(b)(ii). The said provision was invoked by the appellant for seeking de-

recognition of respondent no. 4 as a representative union. The said provision also deserves to be noted at this stage. It reads as under :

"15. *Cancellation of registration.*—The Registrar shall cancel the registration of a union-

(a) xxx xxx xxx

(b) if [after giving notice to such union to show cause why its registration should not be cancelled and] after holding such inquiry, if any, as he deems fit, he is satisfied—

(i) xxx xxx xxx

(ii) that the membership of the union has for a continuous period of three [calendar] months fallen below the minimum required under section 13 for its registration:

Provided that where a strike or a closure not being an illegal strike or closure under this Act in an industry involving more than a third of the employees in the industry in the area has extended to a period exceeding fourteen days in any calendar month, such month shall be excluded in computing the said period of three months:

Provided further that the registration of a union shall not be cancelled under the provisions of this sub-clause unless its membership [for the calendar month in which show cause notice under this section was issued] was less than such minimum; or

xxx xxx xxx"

Our attention was also invited to Section 16 of the BIR Act which deals with application to be made by the rival union that wants to be registered as a representative union in place of existing union like respondent No. 4. It must be noted that the appellant has never claimed benefit of Section 16 of the BIR Act by staking its claim for displacing respondent no. 4 as a representative union on the ground that it had more membership of the employees/workmen of textile industry in Bombay as compared to respondent no. 4 during the relevant months. It is, therefore, not necessary to dilate on the said provision any further. Learned counsel for the appellant invited our attention to Section 22 of the Act which deals with registration of an approved union. In our view,

A the said provision is also not of much relevance. Our attention was also invited to Section 118 of the Act which provides for powers of the Registrar and other authorities under the Act regarding summoning of witnesses etc. For resolving the present controversy, said Section is also not of much relevance. Our attention was also invited to Section 123 (2) (na) which deals with rule making power under which the Maharashtra State had framed the B relevant rules. Emphasis was placed on Rule 28A for pointing out the procedure to be followed by the Registrar under the Act in connection with application for registration under Section 13(1) of the Act and application for displacing the representative union by the rival applicant union under Section 16 of the Act. In our view, the said rule is also strictly not of much relevance for C resolving the present controversy as the rule making authority has conspicuously not included Section 15 within the procedural sweep of Rule 28A. Consequently, the procedure to be followed by the Registrar under the BIR Act while considering the application under Section 15 for cancelling the registration of a representative union duly registered under the BIR Act earlier, is the one provided under the Section itself. It leaves to the discretion D of the Registrar to conduct such inquiry as he thinks fit in this connection and has to decide the application after issuing show cause notice to the union whose registration is sought to be cancelled. It is not in dispute before us that requisite procedure of Section 15 was followed by the Additional Registrar after remand of the proceedings by the High Court pursuant to its decision E in Writ Petition No. 856 of 1982.

It is in the background of the aforesaid statutory schemes to which our attention was invited by learned counsel for both sides that we now proceed to deal with the moot question posed for our consideration.

F A mere look at Section 3(25) shows that the definition of a 'member' which applied in the relevant time and which is in the same form on the statute book till date clearly indicates that a person can be a member of a union if he satisfies the following two requirements : (i) that he is an ordinary member of a union and (ii) he has paid the subscription of not less than 25 paise per G calendar month. Now, the 'ordinary member of a trade union' connotes a member employee-workman engaged in the concerned industry and who is other than an *ex-officio* member of the union. Section 6 of the Trade Unions Act, 1926 (for short 'the Act') deals with provisions to be contained in the rules of a trade union. It is not in dispute between the parties that both the appellant as well as respondent No. 4 are registered trade unions under that H Act. Section 6 thereof provides that a trade union shall not be entitled to

registration under this Act, unless the executive thereof is constituted in accordance with the provisions of this Act and the rules thereof provide for the following amongst other matters, namely— A

"xxx xxx xxx

(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; B

"xxx xxx xxx" C

Thus, an ordinary member of a trade union would be an employee in that industry with which the trade union is concerned and would not include honorary or temporary members, like office bearers. It is not in dispute that the membership of respondent no. 4 union consisted of ordinary members meaning thereby, the workmen actually engaged in textile industry in the city of Bombay during the relevant months in question. However, the further D requirement of Section 3 sub-section 25 is that in order that such an ordinary member can be treated to be a member of the union it has to be shown that he has paid the subscription of not less than 25 paise per calendar month. Now it becomes at once clear that a small amount of minimum 25 paise is required to be shown to have been paid by such an ordinary member for the E given calendar month. As the question arises whether a particular member had paid subscription for the relevant three months i.e. December, 1981, January, 1982 and February, 1982, it may be found that he might have paid up the subscription for each of these months simultaneously say, in March or April, 1982. Still he could be said to have paid the requisite subscription per each of these calendar months. It is not as if the subscription must be F shown to have been paid by such ordinary member on or before the end of the concerned calendar month. The legislature had advisedly used the terminology "has paid a subscription of not less than 25 paise *per* calendar month". It has obviously not used the phraseology "has paid a subscription of not less than 25 paise before the end of a calendar month". The phrase G "has paid" is very significant. Payment of subscription of such a meagre amount of 25 paise per calendar month at any point of time for any of the past calendar months would entitle such member to continue on the roll of membership of a union. If he pays at a time say Rs. 1.00 covering the subscription for each of the calendar months i.e. December, 1981, January, 1982, February, 1982 and March, 1982 in March, 1982 itself, he can legitimately H

A say that he has paid subscription of not less than 25 paise *per each of the aforesaid three calendar months.* It is not the requirement of the main part of Section 3(25) that such subscription should have been paid on or before the expiry of the concerned calender month. Once we turn to the explanation of the aforesaid section, a different legislative intention becomes at once clear. While considering the question of arrears of subscription per calendar month
B the requirement of the provision is entirely different. A member would be treated to be in arrears for that calendar month if he has actually not paid such subscription by the end of the concerned calendar month for which it was due. That explanation naturally is a reference to the proviso which precedes it and qualifies the term "arrears of subscription" but it does not travel
C backward any further so as to qualify entirely a different phraseology found in the main part of Section 3(25) of the BIR Act about the payment of subscription of not less than 25 paise per calendar month. It must, therefore, be held that if on facts it is found that subscription for the relevant three calendar months has already been paid up by the concerned member even in lumpsum at a later point of time after the expiry of the calendar month
D concerned such payment in lumpsum may ensure for his continuance as a member if he so behaved and paid up subscription of not less than 25 paise per calendar month concerned. However, if the section would have stood without the proviso, the apprehension voiced by learned counsel for the appellant would have assumed greater efficacy. He was right when he
E contended that it may happen that a member may be in arrears for a number of months but once the trade union whose registration is sought to be cancelled gets a hint that an application for cancellation of its registration is in the offing under Section 15(b)(ii) of the Act then lumpsum payments of subscription in arrears by requisite number of members may get arranged at a time so as to frustrate the application under Section 15. This anxiety and
F apprehension on the part of learned counsel for the appellant are tried to be met by the legislature itself and, therefore, it enacted a safety valve and a road block against such activities on the part of the union whose registration was sought to be got cancelled on relevant date by enacting the proviso with the explanation of Section 3(25) of the BIR Act to the consideration of which,
G therefore, we now have to turn.

On a conjoint reading of the proviso to Section 3(25) and the explanation attached thereto, it becomes at once clear that even if a person may have paid the subscription of not less than 25 paise per calendar month for the relevant three calendar months at a time subsequently and, therefore, may have remained
H out of the sweep of the main part of Section 3(25), his membership is liable

to be displaced if he is hit by the proviso and the explanation. Meaning thereby, if a member is shown to have paid subscription for December, 1981, January, 1982 and February. 1982 say in March or April, 1982 and who can legitimately contend that he had paid subscription of not less than 25 paise per each of these calendar months, his membership for each of these calendar months which would remain guaranteed under the first part under Section 3(25) would be deemed to be non-existent once the provisions of the proviso and the explanation hit such membership. The proviso requires such a defaulting member who seeks to pay up subscription of requisite calendar months at a time subsequently to satisfy the authorities that during the period of six months immediately preceding the month in question which is on the anvil of the scrutiny, he had so behaved that his subscription was not in arrears for a period of more than three calendar months falling within the aforesaid six months. In other words, for deciding whether a person was an ordinary member of respondent No 4 union in the month of December, 1981 which is the first month on the anvil of scrutiny for the purpose of consideration of appellant's application under Section 15(b)(ii) of the Act, the period of six months immediately preceding such time, namely, December, 1981, will consist of the block from June, 1981 to November, 1981. It has to be shown by respondent no. 4 union that its members concerned had not been in arrears of subscription for more than three calendar months during the period beginning from June, 1981 and ending by November, 1981. If it is shown that such a person had so behaved and had not attracted the adverse effect laid down in the proviso, then only such member will be treated to have continued as per the main part of Section 3(25) but if it is shown that during the block of June, 1981 to November, 1981 for a period of more than three calendar months he was in arrears, meaning thereby, as seen from the explanation to the proviso, the subscription of such a member for a particular calendar month during this period was not paid up by the end of the calendar month concerned. Such a member would be treated to be in arrears for that calendar month and even if he had paid such arrears by the next month his subscription for that calendar month would be treated to have remained in arrears. If such arrears cover more than three calendar months then his payment of subscription for December, 1981 will be of no avail. This safety valve has been enacted by the legislature, in our view, to provide for a contingency in which such chronic defaulters in clearing the arrears of subscription may not get a *locus paenitentiae* and may not also afford an equal *locus paenitentiae* for their union to get subscription paid up in lumpsum subsequently for each of the three calendar months on the anvil of scrutiny in proceedings for cancellation of representative character of such unions. For appreciating the scope and

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A ambit of the proviso read with the explanation, we may take an illustration.

Let us take the case of a member of the union who might have paid subscription for the month of December, 1981 say by March, 1982 in lumpsum along with subscription of subsequent months. Then he can legitimately say that he has paid the subscription of not less than 25 paise per calendar month
B of December, 1981 whether he paid the same before 31 December, 1981 or subsequently would remain irrelevant. However, the proviso poses a bottle-neck or a safety valve under which if such a member is shown not to have behaved properly in past and if the requirements of the proviso get attracted for him then he will be deemed not to be a member even for December, 1981.
C Such a member who is otherwise said to have paid 25 paise for the month of December, 1981 though belatedly, has got to be subjected to scrutiny about his past behaviour and conduct regarding payment and clearance of arrears of subscription for the relevant period of six months immediately preceding December, 1981 i.e. from June, 1981 to November, 1981, as seen earlier. We may take the following fact situation to highlight the scope and ambit of the
D proviso and the explanation to Section 3(25) *qua* such a member:

Sl. No.	Name and year of the month	Date of payment of minimum subscription and the amount	Whether in arrears for the calendar month concerned
1.	June, 1981	15 July, 1981 paise 25	In arrears for the month of June'81 as laid down by the explanation.
2.	July, 1981	15 July, paid paise 50 to cover subscription for June as well as July, 1981.	Only arrears for June will continue. No arrears for July.
3.	August, 1981	15 October, 1981 No payment	In arrears for August, 1981.
4.	September, 1981	15 October, 1981 No payment	In arrears for September, 1981.

5.	October, 1981	15th october, 1981 Amount of paise 75 (for covering the arrears of August, September and subscription for October, 1981)	Default in clearance of arrears for August and September 81 continues.
6.	November, 1981	15th November, 1981, paise 25 paid	No default for November, 1981.

In the light of the aforesaid illustration, we have to see how the proviso read with the explanation to Section 3(25) can operate. It becomes at once clear that during the relevant period of six months immediately preceding December, 1981, the concerned member has so behaved that he is in arrears for a period of three calendar months comprised in this period, namely, June, August and September, 1981, though in the succeeding months the subscription for June is already paid up in July. Because of the thrust of the explanation this member will be deemed to be in arrears for June, August and September, 1981 as he had not paid subscription for each of these calendar months by the end of the calendar month concerned. However, even if he is deemed to be in arrears for these three relevant calendar months, his case would not be covered by the sweep of the proviso which can make him a deemed non-member for the relevant month of December, 1981 if his subscription is found to be in arrears for a period of *more than* three calendar months. The vexed question is whether in the light of the aforesaid illustration such a member can be said to be in arrears of subscription for a period of more than three calendar months. On the interpretation which is canvassed by learned counsel for the respondents and which was upheld by the High Court, the proviso will not adversely affect the membership of such a person and he would not be deemed to be a non-member for December, 1981 for the simple reason that he was not in arrears for a period of more than three calendar months relevant for consideration for the application of the proviso. He was in arrears for the calendar months June, August and September, 1981 but in order to be treated to be in arrears for a period of more than three calendar months it had to be shown that he was in such arrears for a period of four calendar months or even more as a period of "more than three calendar months" can not be equated with the phraseology "period of three calendar months". In this connection, our attention was invited to the definition of the term "member" which was operating since 1953 and which underwent a change in 1965 and

A which changed definition is applicable on the facts of the present case. The definition of the term" member" as stood on the statute book since 1953 read out as under:

> "Member" means a person who is an ordinary member of a Union and who has paid a subscription of not less than two annas per calendar
B month.
>
> Provided that no person shall at any time be deemed to be a member if his subscription is in arrears for a period of three calendar months or more next preceding such time.
>
> *Explanation*: The subscription for a particular calendar month shall,
C for the purpose of this clause, be deemed to be in areas if such subscription is not paid by the end of the calendar month in respect of which it is due".

It is this definition which underwent a change in 1965 and became the definition in the present form. When the definition of 'member' under Section
D 3(25) as existing on the statute book in 1953 is placed in juxtaposition with the definition as available in the present form it becomes at once clear that the earlier proviso tried to treat the member to be a non-member by a deeming provision if he was in arrears of payment of subscription for a period of even three calendar months or more next preceding the month in question. If the
E old definition of 1953 had operated at the relevant time, a situation for which the appellant's learned counsel is canvassing would have been available to him as for the month of December, 1981 three calendar months next preceding would have been September, October and November, 1981 and if it was shown that he had not paid the subscription for each of these months by the end of that month then as per the explanation which is *pari materia* with the
F present explanation he would have been treated a non-member for December, 1981 even if he had paid subscription for December, 1981. Thus, by the deeming provision as per the proviso existing prior to 1965, the legislature treated deemed arrears of subscription for three calendar months or even more to be a sufficient disqualification for a person to be continued on the roll of
G membership of the union for subsequent months. However, the said proviso has undergone a sea-change from 1965 and as per present form in which it exists on the statute book, a person would be deemed to be a non-member only if his subscription is in arrears for a period of more than three calendar months within the block of six earlier calendar months. The legislature in its wisdom removed the fetter of deemed non-membership which earlier existed
H when even three calendar months arrears of subscription were sufficient to

raise the deeming fiction of non-membership of such a person. It, therefore, cannot be said that what is deleted by the legislature from the proviso after 1965 must by a process of interpretation be treated to have existed even after the deletion of the term "arrears for a period of three calendar months". In other words, after 1965 amendment in the proviso to Section 3(25), it is not enough to raise the deeming fiction for displacing a member for the month of December, 1981 by only showing that he was in arrears for a period of three calendar months preceding December, 1981 but on the contrary, the legislature by providing a wider range for deemed non-membership during six preceding months has thought it fit to provide in its wisdom that the deeming fiction of non-membership would arise only when during the immediately preceding six months' period the concerned member has so behaved as to remain in arrears by not paying subscription before the end of each of the calendar months which must be more than three such months. Meaning thereby, they may be four, may be five, may be six, as the inquiry about his past conduct has to be spread backwards up to a maximum period of six months immediately preceding the month in question, namely, December, 1981. It is not possible to agree with the contention of learned counsel for the appellant that period of more than three calendar months as mentioned in the proviso pursuant to the amendment in 1965 can be said to have set in once it is found that for each of the preceding three calendar months subscription was not paid by the end of such month and moment three calendar months are over without payment of the due subscription for each of these months, on the stroke of 12 O'clock midnight of the third calendar month the period of more than three calendar months can be said to have started. It is obvious that the concept of arrear for a calendar month as laid down by the explanation takes in its sweep the conduct of a member who does not pay the subscription for the concerned calendar month by the end of that month. Meaning thereby, he has full play and *locus paenitentiae* to pay up the subscription for the month concerned at any time from first till the last day of such calendar month. If the contention of learned counsel for the appellant is accepted, a very curious result would follow which is not contemplated by the Section and which would not reflect the legislative intent underlying the enactment of the proviso as amended in 1965. If the interpretation put forward by learned counsel for the appellant is accepted then it can be said in the light of the aforesaid illustration that during the relevant period of six months from June, 1981 to November, 1981 the concerned member was deemed to be in arrears for the months of June, August and September as he had admittedly not paid subscription by the end of each of these months. If that happens, according to learned counsel for the appellant, moment the last calendar month for

A which he has in arrears ended, namely, September, 1981 by first of October such member can be treated to have been in arrears for more than three calendar months. However, as provided by the explanation, in order that such a member can be said to be in arrears for the next calendar month i.e. the fourth calendar month which obviously would result into his being in arrears for more than three calendar months, on first of October how can he be said B to be in arrears for that month i.e. the fourth calendar month when time to pay up subscription for October is still not over and is available to him as per the explanation till 31st October of that month? The interpretation canvassed by learned counsel for the appellant would render the phrase "*more than* three calendar months" totally otiose. It is also necessary to note, C in this connection, that legislature has clearly expressed a different legislative intent while substituting the earlier proviso to Section 3(25) which was on the statute book from 1953 by deleting the words 'any arrears for a period of three calendar months' and by substituting the words 'arrears for a period of more than three calendar months'. It is axiomatic that 'more than three calendar months' cannot be equated with 'three calendar months'. In this connection, D it is also interesting to compare the phraseology employed by the legislature in Sections 13 and 16 wherein an applicant union for getting registration as a representative union under Section 13 or the rival union to displace such a representative union by applying under Section 16 has to show its requisite 25% membership of the workmen engaged in that industry for a continuous E period of three calendar months immediately preceding such application. Continuous period of three calendar months would naturally start with the first month and end with the third month. Such a phraseology is conspicuously absent in the proviso to Section 3(25) as it stands on the statute book after 1965. The interpretation which appealed to the high Court and which, in our view is the correct interpretation, fructifies the legislative intent underlying F the enactment. It has to be kept in view that the membership with which we are concerned is of persons who are mostly illiterate labour force working in various textile mills and other industries governed by the BIR Act in Bombay or at other important centres. They are largely drawn from rural areas and come from long distances to eke out their livelihood in search of maintaining G themselves and the members of their family. Such poor and illiterate persons who join the unions which function for them in a representative capacity for ventilating their grievances must be permitted to be duly represented by the unions of their choice. The interpretation which fructifies this underlying purpose of legislation has to be preferred. The representative union of such employees, by the process of collective bargaining on their behalf with the H mill owners' association, can bring about appropriate settlements of industrial

disputes while dealing with better financially and socially placed unions of employers who naturally have larger economic resources and can get able assistance of competent legal and financial brains. Such illiterate and unorganised masses of workmen, therefore, can be brought on a quick footing for the purpose of bargaining with such mightier organisation of employers only when they continue to be represented by the representative union. Such illiterate masses cannot be dis-membered only because they had not paid pittance of 25 paise per month of subscription or even more as required by their bargaining agents/unions for ventilating their grievances in a collective manner. The BIR Act is based on the principle of industrial democracy. Any provision of the Act which tries to cater to the needs of these illiterate masses of workmen has to be so interpreted as to subserve the legislative intent underlying the principle of industrial democracy and collective bargaining guaranteed by the Act. Any interpretation which fructifies such benevolent scheme and which guarantees continuance of membership of such illiterate masses of workmen has to be preferred to the interpretation which frustrates the scheme underlying such a benevolent enactment. The deeming fiction contained in the proviso to Section 3(25) for dis-membering a person has, therefore, to be raised only on a strict construction of the proviso and not on a liberal construction of such a disabling provision. Therefore, if two interpretations are possible, the one that restricts the scope of the proviso which has a disabling effect on the membership of the union has to be preferred to the one which extends its scope. However, we hasten to add that on the setting of Section 3(25) along with the proviso and the explanation even two interpretations are not reasonably possible. In fact, on the express language employed by the legislature in the proviso as amended in 1965 read with the explanation, the only plausible interpretation which appealed to the High Court is clearly discernible from the very blue print of the proviso and the explanation to Section 3(25).

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We may, at this stage, also refer to one additional interpretation canvassed by learned counsel for the appellant in connection with the proviso in question. He submitted that a period of more than three calendar months during the period of six months would mean that if a member is in arrears and has not paid subscription for the month by the end of June, 1981, he will be in arrears for that month as per the explanation. Thereafter during subsequent months i.e. July to November, 1981 if he has not paid up the subscription for June, 1981 even though belatedly the arrears for June, 1981 will continue to exist from July onwards. Then in July 1981 he will be treated to be in arrears of subscription for June, 1981 for a period of more than one month because

G H

A July is after June and if arrears for June 1981, remain uncleared in the next month of August, 1981 then in the beginning of August he will be treated to be in arrears for a period of more than two calendar months, namely, June and July, 1981 and if even by August end subscription for June is not cleared, then on the first of September, 1981 he will be treated to be in arrears of subscription for June, 1981 for a period of more than three calendar months, B June, 1981, July, 1981 and August, 1981. This, according to him, is the interpretation of the phrase "for a period of more than three calendar months". It is difficult to countenance this interpretation. Period of more than three calendar months would naturally call for the inquiry whether the arrears for the concerned calendar months have got so accumulated that they represent C a period of more than three calendar months at a given point of time, out of the relevant period of six months. When subscription for June, 1981 was not paid by the end of June, as per the explanation a member would be treated to be in arrears for June, 1981. Even if he paid subscription of June in July, 1981 along with the subscription for July, 1981 he would still be deemed to be in arrears for June, 1981 for the purpose of the proviso read with the D explanation. Deemed arrears remain as such even if cleared later on. Once the deeming provision of the explanation operates *qua* the arrears for June, 1981 subsequent payment in July for the month of June cannot whittle down the deeming provision regarding arrears for June, 1981 which would attach to the conduct of such a member moment he has not paid up the subscription by E the end of June. That will be the arrear for June, 1981. All such deemed arrears can be added up further, for the respective succeeding calendar months if he had not paid up subscription by the end of these succeeding calendar months. When such a conduct continues for respective calendar months of August and September, 1981, as per the explanation he will be said to be in arrears for a period of three calendar months but the proviso in the present form F requires not only arrears for the period of three calendar months but for a period of more than three calendar months. Thus for the fourth calendar month during the relevant period he must be shown to have not paid the subscription for the fourth calendar month before the end of that calendar month. If that happens then only he can be said to be hit by the proviso being G in arrears for a period of more than three calendar months. If the interpretation sought to be canvassed by learned counsel for the appellant is accepted then on account of arrears for only one month, namely, June, 1981 he will be liable to be dis-membered even though subsequenly for all the remaining five months from July, 1981 to November, 1981 he promptly pays subscription before the end of each of these succeeding five months. That would result H in almost re-drafting the proviso which would then mean "if he is in arrears

for any of the calendar months during the period of six months immediately preceding such time" and such arrears have continued for at least three calendar months at a time. Such is not the legislative scheme. In fact such a drastic scheme did not exist even under the earlier proviso as existing on the statute book from 1953. It also required arrears for at least three calendar months but never required arrears for only one calendar month subsisting for three calendar months. The emphasis tried to put by learned counsel for the appellant on the words "period of more than three calendar months" does not advance his case further for the simple reason that the phrase 'period of more than three calendar months' deals with the time span during the relevant period of six calendar months preceding the month in question within which the conduct of the member concerned has to be scrutinised. That would not require a continuous period of more than three calendar months as suggested by learned counsel for the appellant. Period of more than three calendar months encompasses two termini one the beginning of that period and other the end of that period. During this time span the conduct of the concerned member has to be scrutinised. It may be spread over more than three calendar months during the block of six months prior to December, 1981. Learned counsel for the appellant then submitted that if this is the legislative intent then it was easy to enact a new proviso to the following effect. "If his subscription is in arrears for a period of four calendar months". It is easy to visualise that the intention of the legislature could have been fructified if such a provision was made. But the same intention can equally get fructified by enacting the words "for a period of more than three calendar months". It is also to be kept in view that the legislature was dealing with a period of six months immediately preceding the relevant month which is on the anvil of scrutiny in the proceeding under Section 15 of the BIR Act. During this period of six months if a member is in arrears for a period of more than three calendar months he can be in arrears for four or five or for even six calendar months. In order to cover all these contingencies the legislature in its wisdom has used the terminology "in arrears for a period of more than three calendar months" instead of the phraseology "for a period of four calendar months". Whatever that may be, the fact remains that on the express language of the proviso as read with the explanation it has to be held that before a member can be treated to be a deemed non-member for December, 1981 it has to be shown that during the six months preceding December, 1981 i.e. from June, 1981 till the end of November, 1981 he was at any time in arrears of subscription for more than three calendar months, meaning thereby for four calendar months or even more. But if it is shown that he was in deemed arrears as provided by the explanation of the proviso for only three calendar months or

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A less and not for a longer period than three calendar months, then he cannot be deemed to be a non-member for December, 1981. It has also to be visualised that there is a clear finding of fact reached by the appellate court, namely, the Industrial Court and as confirmed by the learned single Judge and by the Division Bench of the High Court that 61,509 members of respondent no. 4 union who had not paid subscription for December, 1981 by the end of that month were not in arrears for even three calendar months leaving apart arrears for more than three calendar months, during the period June, 1981 to November, 1981. These 61,509 workmen members could not, therefore, be treated to be non-members of respondent no. 4 union only because in the month of December itself they had not paid up subscription by the end of December, 1981. On a conjoint reading of the main provisions of Section 3(25) and the proviso and the explanation thereof, the High Court was justified in confining the view of the appellate Court that these 61,509 workmen had to be added back to the figure of 49,670 workmen who were members of respondent no. 4 union in December, 1981 and who had paid up the subscription in time. Once this figure is added, total membership figure obviously goes beyond the requisite 25% minimum membership for December, 1981 as it will be far beyond 56,250 which was the requisite membership of minimum 25% work force in cotton textile industry in Bombay for December, 1981. Once the interpretation put forward by the High Court and which is upheld by us in the present Judgment gets attracted, on the aforesaid finding of fact there is no escape from the conclusion that a part from the scrutiny regarding remaining months at least for the first month of December, 1981 membership of respondent no. 4 union had exceeded 25% of the work force in the cotton textile industry in the city of Bombay. It becomes, therefore, obvious that application of the appellant for cancellation of registration of respondent no. 4 union under Section 15 of the BIR Act would fail as the requirements of the said provision to the effect that for each of the three relevant months preceding March, 1982, namely, December, 1981, January, 1982, February, 1982 and also for June, 1982, respondent no. 4's membership must be said to have fallen below 25%, would not remain established. Even if for one month of December, 1981, the membership is above the requisite 25%, the application has to fail as fairly conceded by learned counsel for the appellant.

The contention of learned counsel for the appellant in the written propositions that if subscription remains in arrears for three calendar months it necessarily means that subscription is in arrears for a period of more than three calendar months as a length of time measured in terms of calendar months once three calendar months are over cannot be countenanced for the

simple reason that what the legislature intends by employing express terminology in the proviso to Section 3(25) is to the effect that at a given point of time within the block period of six months preceding the month in question, the subscription of the concerned member should be in arrears not for three calendar months but for a longer period which necessarily would require subscription to be in arrears for the additional calendar month apart from the earlier three calendar months during which subscription has not been paid as required by the explanation. The submission that the moment it is found that subscription is in arrears in respect of three calendar months it means that subscription is in arrears for a period of more than three calendar months is self-contradictory. Subscription if in areas in respect of only three calendar months can by no stretch of imagination be considered as subscription being in arrears in respect of more than three calendar months. The phrase "period of more than three calendar months" necessarily takes in its fold the conduct of the defaulting member with reference to not only three calendar months but more than three calendar moths meaning at least four *if not more* than four calendar months within the block period of six calendar months immediately preceding the month in question, as seen earlier.

In the result, the appeal fails and is dismissed. In the facts and circumstances of the case, there will be no order as to costs.

V.S.S. Appeal dismissed.