

SUPREME COURT OF INDIA

R.G.D'Souza

Vs.

Poona Employees Union

C.A.No.10129 of 2010

(V.Gopala Gowda and C.Nagappan JJ.)

18.11.2014

JUDGMENT

V.GOPALA GOWDA, J.

1. The appellant has filed this appeal questioning the correctness of the Judgment and order dated 25.2.2009 passed in W.P. No.4048 of 2008 by the Division Bench of High Court of Judicature at Bombay affirming the order of Industrial Court, Pune dated 11.04.2008 whereby the Industrial Court set aside the order of Additional Registrar, cancelling the Registration Certificate of the Poona Employees Union-the respondent No.1 (hereinafter referred to as the Trade Union), urging various facts and legal contentions.

2. The factual matrix and the rival legal contentions are briefly stated hereunder with a view to find out as to whether the impugned Judgment and order warrants interference by this Court under its appellate jurisdiction. The appellant was the Union President of the Trade Union when the application for the Registration of it was submitted. Due to internal clashes, he was expelled from the Trade Union. There were some disputes between the Trade Union and another Union namely, Bhartiya Kamgar Sena (BKS for short) pending before the Industrial Court. The appellant claimed that he was an active member in the Labour movement and an interested party and therefore, filed an application under Section 10 of the Trade Unions Act, 1926 (for short the Act) before the Additional Registrar of Trade Unions seeking cancellation of the Certificate of

Registration of the Trade Union on the ground that the same was obtained by fraud, mistake or misrepresentation.

The ground taken for cancellation of the registration of the Trade Union was non-filing of the necessary documents as per the Rules and Regulation and obtained Registration Certificate by mistake and fraud which was accepted by the Additional Registrar of the Trade Unions. The Additional Registrar of Trade Unions by his order dated 12.2.2008 cancelled the registration of the Trade Union.

3. Being aggrieved by the said order, the Trade Union filed an appeal under Section 11 of the Act before the Industrial Court, Pune, the Appellate Authority. After hearing both the parties, the Industrial Court, Pune passed an order on 11.4.2008, by recording its reasons, set aside the order passed by the Additional Registrar of Trade Unions.

4. Being aggrieved by the order passed by the Industrial Court, the appellant preferred writ petition No. 4048 of 2008 before the High Court of Bombay under Article 226 of the Constitution of India urging various grounds, inter alia contending that the order passed by the Industrial Court is vitiated both on the grounds of erroneous finding and error in law. The High Court came out with the following two issues involved in the petition:

Whether the appellant had locus standi to invoke the proceedings under Section 10 of the Trade Unions Act, 1926?

Whether the Registration Certificate obtained by fraud or mistake by the first respondent-Trade Union and so liable to be cancelled?

5. The High Court rejected the submissions made on behalf of the appellant and held that the appellant had no locus to apply for cancellation of the Certificate of Registration of the Trade Union and that the view taken by the Industrial Court on the same is legal and valid.

6. Mr. C. U. Singh, the learned senior counsel on behalf of the appellant has argued that the Industrial Court completely mixed up the issues while answering the questions of law raised before it. It is urged by him that at the time of applying for the

registration, the Trade Union did not follow the provisions under Sections 4 and 6 of the Act. The Trade Union ought to have specifically mentioned the name/names of any establishment or nature of any industry/industries in which the persons employed were to be united or combined. In the absence of mentioning the name of industry and non- inclusion of the same in the schedule in the application in the prescribed form is a gross mistake on the part of the Trade Union. Our attention was also drawn to the application submitted by the Trade Union before the Registrar of Trade Unions for its registration. Further, the learned senior counsel urged on the point of requirement of specific mention of the object or purpose in the application for registration by the Trade Union by relying upon Indian Express Newspapers (Bom) Employees Union v. K.M. Desai & Ors.[1] and Maharashtra Engg. Plastic & General Kamgar v. Chamundi Petroleum & Ors.[2] in support of his case.

7. It is also contended by the learned senior counsel that the registration was obtained by mistake or fraud by the Trade Union and the same was not examined by either the Industrial Court or the High Court.

8. He further contended that the details of the office bearers of the Trade Union were not given in the Schedule-I of the list of officers as per the prescribed Form A, relevant column 5, under Section 5(1)(c) of the Central Trade Union Regulations, 1938. In support of the said legal contention he has placed reliance upon the decision of this Court in Forbes Forbes Campbell & Co. Ltd. v. Engineering Mazdoor Sabha[3], wherein with regard to recognition of a Trade Union this Court held that filing in the form by furnishing details is mandatory, and that form and rule must be read in tandem. It was contended that the said decision with all fours is applicable in justification of cancellation of Registration Certificate.

9. It was further contended by the learned senior counsel for the appellant that the High Court has erred in law in interpreting the phrase ~mistakeTM occurred under Section 10(b) of the Act stating that the legislative wisdom which excludes an act of mistake the power of review can be exercised by the Registrar of Trade Unions and the order of cancellation of its Certificate of Registration can be made, but the High Court has erroneously held that registration cannot be cancelled by the Registrar in exercise of the power by him under Section 10 of the Act.

10. Further, the learned senior counsel placing strong reliance upon Section 4 of the

Act, pointed out that the Amendment in view of the first proviso to Section 4 of the Act, which mandates that no Trade Union of workmen shall be registered unless at least ten percent or one hundred of the workmen whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union, on the date of making of application for registration. The second proviso states that no Trade Union of workmen shall be registered unless it has on the date of making application not less than seven persons as its members, who are the workmen engaged or employed in the establishment or industry with which it is connected. Such requirement under Section 4 and its proviso is a statutory legal requirement for either registered Trade Union or continues as a registered Trade Union even after the amendment to the Act by bringing an Amendment to its constitution is the legal requirement in accordance with the aforesaid provisos. Therefore, he contends that non-compliance of the said legal requirement by the Trade Union even after the amendment to the Act has invited the cancellation of its registration. This cancellation was done in the instant case by the Registrar of Trade Unions at the instance of the appellant. Since the same was not considered by the High Court, the impugned judgment and order is liable to be set aside.

11. On the other hand, Mr. Colin Gonsalves, the learned senior counsel on behalf of Trade Union, sought to justify the impugned Judgment and order passed by the High Court by affirming the Judgment of the Industrial Court by placing strong reliance upon the fact that the Trade Union has been actively working for the welfare of labourers since 1986. Cancellation of the Registration Certificate by the Registrar of Trade Unions at the instance of the appellant is totally impermissible under Section 10 of the Act. As per Section 10(a) of the Act, the Registrar of Trade Unions can take cognizance of the cancellation on application by a Trade Union and not that of an individual. It was contended that the appellant had no locus standi under Section 10(a) of the Act to challenge the Registration Certificate issued by the Additional Registrar of Trade Unions. It is also urged by him that as per Section 10(a) of the Act the mistake ought to be on the part of the applicant and could not be on the part of the Registering Authority in support of the said contention and legal position, the learned senior counsel has relied upon the judgment of Karnataka High Court in the case of Registrar, Trade Unions, Mysore v. M. Mariswamy[4], wherein the Court held as under:-

Index Note: (A) Trade Unions Act (1926), Section 10(b)- Withdrawal or

cancellation of registration on ground of mistake must have been on the part of the applicant Union and not on the part of the Registrar himself- withdrawal or cancellation cannot be made for the mistake of the Registrar himself.

12. On the point of disclosure of the object, the learned senior counsel placed reliance on B.P.L. Group of Companies Karmikara Sangha v. Commissioner of Labour[5] in support of the submission made as stated above.

13. Learned senior counsel appearing on behalf of the Trade Union further justified the impugned judgment on three grounds. The authorisation and approval of the registration of the Trade Union was made by the Registrar of Trade Unions. In the absence of prohibition or prevention under the Statute from being a general Trade Union, non-furnishing the name of the industry or industries under Schedule III in the relevant column Sl. No. 5 of the application form it is specifically mentioned any industry means all, the object of registration of the Trade Union further fortifies the stand taken by the Trade Union that it is a general Trade Union, where it is empowered to have enrolment of workmen from all the industries which are situated within the Pune District. Non-furnishing the name of the industries in respect of which the Trade Union has been registered does not vitiate its registration in law. Therefore, non-furnishing the names of industries in the Schedule III portion to the application in the prescribed form is only superfluous and making a big issue in this regard for justification for the cancellation of Certificate of Registration of the Trade Union is wholly untenable in law. Non-furnishing of the names of industries in Schedule III to the application due to inadvertence cannot be attributed as fraud or mistake on the part of the Trade Union to get its registration with the Registrar of Trade Unions and cancellation of the same is not permissible in law. It is not the form, but the substance of the matter and substantial compliance of the details that are furnished in the prescribed form $\sim A^{\text{TM}}$ by the Trade Union that matters, this has been done in the case on hand by the Trade Union and therefore, the impugned Judgment & order passed by the High Court is legal and valid. Further, in response to the reliance placed upon the two judgments namely, Indian Express Newspapers (Bom) Employees Union (supra) and Chamundi Petroleum Case (supra) by senior counsel for the appellants, the learned senior counsel for the Trade Union submitted that they are distinguishable from the present case on hand. In the Indian Express Newspapers case (supra), the constitution of the respondent-Trade Union which consisted of both journalists and non-journalists working in the respondent-company (Indian Express) only mentioned

the objects of the union in Schedule A as printing press and did not bear an entry of the newspaper establishment or a newspaper industry. It was held in that case that the Constitution of the respondent-Trade Union did not permit it to enrol journalists and non-journalists employed by the respondent-Company and that a newspaper industry cannot be equated with the printing press industry as publication of newspaper and periodical involves many more functions. In the case of Chamundi Petroleum (supra) the constitution of the Trade Union did not say that it is in relation to workmen of working in petrol pumps. Therefore, the reliance placed upon the aforesaid two judgments by the senior counsel on behalf of the appellant to justify the order of cancellation of the Registration of the Trade Union are wholly untenable in law as these cases do not apply to the facts and circumstances of the case on hand as both the cases are distinguishable.

14. We have heard both the learned senior counsels for the parties. After examining the correctness of the legal contentions, we are in respectful agreement with the concurrent finding and reasons recorded by the High Court as well as the Industrial Court for the following reasons.

15. As per Section 10 of the Act, the Certificate of Registration of a Trade Union may be withdrawn or cancelled by the Registrar of Trade Union either on application of a Trade Union inviting the attention of the Registrar of Trade Unions or the Registrar may suo moto take cognizance under the said section. There is no mention in the said provision about cancellation of Registration of Trade Union on application by any other person. The said section permits the Authority to cancel the registration of the trade union if, it is obtained by fraud or mistake, but does not permit the Authority to cancel the certificate of registration if, the same is granted by mistake due to incorrect assessment or non-application of mind or mechanical act on the part of the Authority.

16. Even for the sake of argument, it is accepted by us that the mistake is on the part of the Trade Union and in the opinion of the Registrar of Trade Unions in exercise of his powers under Section 10 of the Act cancels the Certification of Registration of the Trade Union, then it must be preceded by an enquiry, followed by show cause notice, disclosing grounds for initiating action so that the same can be answered by the noticee Union effectively. This was not done in the present case on hand and the same has been rightly held by the High Court. Further Rule 8(2) of the Bombay Trade Union Regulations 1927 clearly states that:-

2) The Registrar on receiving an application for withdrawal or cancellation of registration shall, before granting the application, verify himself that the application was approved in general meeting of the Trade Union if it was not so approved, that it has the approval of the majority members of the Trade Union. For this purpose, the Registrar may call for such further particulars as he may deem necessary and may examine any officer of the Union. The above said rule was not fully complied with by the Registrar of Trade Unions and the appellant has not submitted any approval granted by a general body meeting or by majority of the Trade Union for the withdrawal or cancellation of the registration of the Trade Union. The act of fraud or mistake cannot be attributed to the Trade Union since the information provided by the Trade Union for registering itself is not by fraud or mistake as mandated under Section 10 of the Act.

17. With respect to the provisions of Sections 4, 5, and 6 of the Act & Rules, which provide for furnishing the details in the application to be submitted for registration of the Trade Union. The above said provisions of the sections clearly state that they must be complied with for the applying- Union to be entitled for registration. However, it is essential to note that the 1st proviso of Section 4; clause (aa), (b) and (c) of Section 5 and clause (ee) & (hh) of Section 6 were inserted to the Act only by the Amendment Act of 31 of 2001, w.e.f. 09.01.2002, whereas the Trade Union was registered in the year 1986 when part of the above said provisions were not present. Therefore, in the present case on hand, although it was necessary for the Trade Union to comply with and provide all the necessary details under the above said provisions that were relevant at the time of registration, the Registrar either by mistake or due to incorrect assessment or non-application of mind may have issued a Certificate of Registration to the Trade Union. This official act by the Registrar of Trade Unions cannot be nullified by him under Section 10 of the Act, but can only be rectified by the appellate authority or writ court as rightly opined by the High Court in the impugned judgment.

18. In our considered view, the High Court has correctly held that the word any in the application form and the Rules of the Trade Union under Section 6 of the Act can be considered as all. The High Court has rightly held that the word any could mean that the object the Trade Union was to operate in all types of industries in Pune District. The necessity of specifying or disclosing the nature of industry/industries in which the

Trade Union intends to operate and functions came only when the Section 2 of the amendment Act of 31 of 2001 (w.e.f. 9.1.2002) was inserted in the Trade Unions Act, 1926, whereas the Trade Union was registered in the year 1986. The requirement of workmen engaged in an establishment or industry with which it is connected to be members of the Trade Union came only after Section 4 was amended and the provisos were incorporated which came into force w.e.f. 09.01.2002, which is much after the registration of the Trade Union. The first part of the proviso mandated that a Trade Union must have at least ten percent or one hundred workmen engaged or employed in an establishment or industry who are members of such Trade Union on the date of making the application for registration. The second part of the proviso mandated that a Trade Union on the date of making application for registration must have not less than seven persons as its members who are engaged or employed in the establishment or industry with which it is connected. This requirement was not needed at the time of registration of the Trade Union as the above said amendment to the Act came after the registration of the same. From the facts and circumstances of the case on hand, the Trade Union has neither suppressed nor supplied any information by fraud or mistake in order to obtain the Certificate of Registration. Therefore, discrepancy in providing details in the prescribed Form ~A™ being a product of the above Amendment Act cannot invalidate or is not a valid ground to cancel the Certificate of Registration of the Trade Union and the decision of this Court in the case of Forbes Forbes Campbell (supra) as relied on by the learned senior counsel for the appellant is not relevant in the case on hand.

19. In the light of the above discussion and reasons assigned by us, we are of the considered view that the High Court has rightly affirmed the decision of the Industrial Court, wherein it has rightly set aside the cancellation of Certificate of Registration of the Trade Union holding that it is not legal or valid. We find no valid or cogent reasons to interfere with the same in exercise of this Court's Appellate Jurisdiction. The appeal is dismissed. No costs.

- [1] 1995 I CLR 677
- [2] 2007 1 CLR 810
- [3] (1979) 1 SCC 14
- [4] 1974 LAB I.C. 695
- [5] 2001 91 L.L.N. 599