

LEGALFOXES LAW TIMES

CASE COMMENT ON R.G. D'SOUZA SHRAMADEEP HOUSING SOCIETY (APPELLANTS) V POONA EMPLOYEES UNION AND ORS

[2014]

By Yadharthana K

Mr.R.G.D'Souza - Petitioner	Poona Employee Union - Respondent	Additional Registrar
Poona Employee Union - Appellant	D'Souza and Additional Registrar - Respondents	Industrial Court, Pune
Mr.R.G.D'Souza - Petitioner	Poona Employee Union and others - Respondents	High Court
Mr.R.G.D'Souza - Appellant	Poona Employee Union and Anr - Respondents	Supreme Court

Facts

When the request for the Registration Certificate of Respondent No. 1 Union was made, the petitioner was the Unit President of the Respondent No. 1 Trade Union. However, the Petitioner was expelled from the Respondent No. 1 Union as a result of internal clashes. Before the Industrial Court there were certain disputes were pending between the Respondent No.1 Union and another Union, named the Bhartiya Kamgar Sena (BKS). In accordance with Section 10 of the Trade Unions Act, 1926 (Amended Act-2001), the petitioner, a participant in the labor movement, filed a request with the second respondent, the Additional Registrar, Trade Union, asking for the cancellation of the registration of Respondent No. 1 - Union on the grounds that it was obtained through fraud, mistake, or misrepresentation. The Additional Registrar of Trade Union decided the case in favor of the petitioner by order dated February 12, 2008, and it was determined that the registration of Respondent No. 1 - Union is unlawful in and of itself.

Respondent No. 1 - Union challenged the aforementioned order before the appellate authority i.e. Respondent No. 3 - Industrial Court, Pune under section 11 of the Trade Unions Act, 1926. The Order issued by the Additional Registrar of Trade Unions was set aside and annulled by the Industrial Court on April 11, 2008, after hearing from both sides. The primary grounds for the challenge were failure to submit the necessary documents in accordance with the requirements, as well as obtaining the Registration Certificate through fraud or mistake. The petitioner then filed this Writ Petition in the High Court according to Article 226 of the Indian Constitution after feeling aggrieved by the aforesaid judgment and order. (Section 10 of Trade Unions Act, 2019)¹

Issues

- Whether the Registration certificate of the Poona Employees Union valid under the trade unions act?
- Whether section 10 of the Trade unions act, 1926 can be invoked by the Petitioner?

Provision

Act involved – Trade Union Act, 1926

Section 10 of the Trade Unions Act, 1926; Cancellation of Registration.

Certificate of registration of a trade union may be withdrawn or canceled by a registrar -

- (a) On the application of Trade Union to be verified in such a manner as may be prescribed or,
- (b) If the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or that the Trade Union has ceased to exist or has willfully and after notice from the Registrar contravened any provision of this act of allowed Any rule to continue in force which is inconsistent with any such provision, or has rescinded any rule providing for any matter provision for which is required by section 6.²

¹ (Section 10 of Trade Unions Act, 2019)

² (R. G. D'souza Shramadeep Housing Society v/s Poona Employees Union & Others, 2009)

Analysis

The court determined that Section 10 (a) expressly specifies "**on the application of the Trade Union,**" not "**on the application of the individual.**" An individual may make an application to the Registrar of Trade Unions pursuant to Section 10(a) of the Act. The Registrar might then take cognizance suo moto under Section 10 of the Trade Unions Act of 1926. The court went on to say that Section 10 (a) should be read in conjunction with Section 10 (b), which deals with the Registrar's satisfaction with the Certificate's validity. When the Registrar decides to exercise suo moto powers, he or she must first conduct an investigation, which may be preliminary in nature.

Before taking action to revoke the Union's registration, he must first record prima facie reasons for his satisfaction, followed by a show cause notice detailing the basis for the actions, so that the notice Union can properly respond.

The court determined that the Registrar of Trade Unions did not take any such action in this matter, and that it is therefore impossible to conclude that the action was initiated and taken by the Registrar. As a result, the court determined that the Petitioner lacked standing to seek revocation of the Respondent Union's registration, and that the Industrial Court's decision on³ this point was valid and fair. The court further stated that the Registrar is not expected to function mechanically or like a stamp machine while examining an application for registration. If information is determined to be incorrect, the Registrar has the authority to refuse to issue a

Registration Certificate.

According to Section 10, the mistake is the responsibility of the Trade Union requesting for registration, not the Registrar, who has the authority to register the Trade Union. It stipulates that the information provided, facts presented, or data provided by the petitioner Trade Union must be false or incorrect.

Judgment

After observing the validity of the legal arguments, the court respectfully agree with the concurrent conclusion and justifications recorded by the High Court and also the Industrial Court for the reasons listed. According to Section 10 of the Act, the Registrar of Trade Unions may cancel or cancel a Trade Union's Certificate of Registration either on the request of a Trade Union bringing the matter to their

³ (Registration of trade union obtained by fraud/mistake can be cancelled - Supreme Court, 2016)

attention or the Registrar might suo moto take cognizance there under the aforementioned section. The aforesaid provision makes no mention of the termination of a trade union's registration on the basis of a request by a third party. The above-said section allows the Authority to revoke a trade union's registration if it was obtained fraudulently or by mistake, but it does not allow the Authority to cancel a certificate of registration if it was issued in mistake due to an incorrect assessment, a lack of application of mind, or mechanical action on the Authority's part.

Even for the sake of argument, it is acknowledged by the court that the Trade Union made the mistake, and if the Registrar of Trade Unions decides to cancel the Certification of Registration of the Trade Union in the exercise of his authority under Section 10 of the Act, it must be preceded by an inquiry, followed by a show cause notice that discloses the grounds for taking action so that the noticed Union can effectively respond. This was not performed in the specific matter at hand, and the High Court correctly ruled as such. Additionally, the Bombay Trade Union Regulations of 1927's Rule 8(2) makes it quite clear that: **“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 the 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 further particulars as he may deem necessary and may examine any officer of the Union.”**

The Registrar of the Trade Union failed to completely comply with the aforesaid requirement, and the appellant failed to present any authorization from a general meeting or a majority of the Trade Union for the withdrawal or cancellation of the Trade Union's registration. Since the Trade Union submitted accurate information for its own registration, as required by Section 10 of the Act, the act of fraud or mistake cannot be attributed to the Trade Union.

Sections 4, 5, and 6 of the Act and Rules were only added to the Act by the Amendment Act of 31 of 2001, effective as of January 9, 2002, but the Trade Union was registered in 1986, when some of the aforementioned provisions were absent. A Certificate of Registration for the trade union may have been issued by the Registrar inadvertently, incorrectly, or due to inattention. According to Section 10 of the Act, the Registrar of Trade Union cannot reverse this official act; the appellate authority or writ court is the only entity that can do so. It is important to remember that the first proviso of Section 4 clause (aa), (b) and (c) of Section 5, and clauses (ee) and (hh) of Section 6 were only added to the Act by the Amendment Act of 31 of 2001, effective as of January 9, 2002, whereas the Trade Union was registered in 1986, when part of the said provisions were absent.

The word "any" in the application form and the Trade Union Rules under Section 6 of the Act can be interpreted as "all," as the High Court correctly held. Only after Section 2 of the 2001 Amendment Act was added to the Trade Unions Act of 1926 was it necessary to declare or disclose the type of industry or industries. Only after Section 4 was amended and the provisos were added, which took effect as of January 9, 2002—many years after the Trade Union's registration—was it necessary for workers employed in an establishment or industry with which it is associated to be members of the Trade Union

The Court is of the considered opinion that the High Court correctly upheld the Industrial Court's judgment to set aside the cancellation of the Trade Union's Certificate of Registration on the grounds that it was illegal or invalid in light of the aforementioned discussion and the reasons the Court provided. In the exercise of this Court's appellate jurisdiction, the Court is unable to identify any legitimate or compelling reasons to interfere with the same. The appeal is dismissed. No costs.⁴

Judges: V. Gopala Gowda and C. Nagappan.

Conclusion

The Trade Unions Act of 1926 primarily addresses three areas: the prerequisites for trade union registration, the obligations that trade unions must fulfill after registration, and the rights and advantages granted to recognized unions. Trade unions are required to register for various objectives under various legislation. In order to operate as a trade union, every trade union must register under the Trade Unions Act.

⁴ (R.G.D'Souza vs Poona Employees Union & Anr on 18 November, 2014)