

GAHC010182782022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6031/2022

ASSAM HATIFANDI UNION
REP. BY ITS PRESIDENT, BINDA MUDOI, (AGE 64 YEARS) S/O- LT.
CHANDRAMAL MUDOI, R/O- VILL- AMDUBI, P.O. KACHUA, DIST.-
NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE SECY. TO THE GOVT. OF ASSAM, LABOUR WELFARE
DEVELOPMENT DISPUR, GHY-6, ASSAM

2:THE LABOUR COMMISSIONER
GOPINATH NAGAR
GHY-16

3:THE REGISTRAR OF TRADE UNION
ASSAM
GOPINATH NAGAR
GHY-1

Advocate for the Petitioner : MR F Z MAZUMDER

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

12.02.2024

1. Heard Mr. F.Z. Mazumder, learned counsel for the petitioner. Also heard Mr.

K. Gogoi, learned counsel for the respondent nos.1, 2 & 3.

2. The petitioner's case is that the petitioner is comprised of members, who are Mahuts. An application dated 21.12.2021 had been submitted by the petitioner to the Registrar of Trade Unions, Assam for registration as a Trade Union in the name of ASSAM HATI PHANDI UNION. However, as no decision was being taken by the respondents on the petitioner's application for registration as a Trade Union under the Act of 1926 (hereinafter referred to as "the Act of 1926), the petitioner has filed the present writ petition, praying for a direction that the respondent nos.2 & 3 should register the petitioner as a Trade Union.

3. During the pendency of the present case, the respondent no.2 annexed the Speaking Order dated 02.09.2022 issued by the Registrar of Trade Unions, Assam in the affidavit-in-opposition filed by the respondent no.2. The Speaking Order dated 02.09.2022 issued by the Registrar of Trade Unions, Assam, rejected the petitioner's prayer for registration as a Trade Union, on the ground that only 3 members of the petitioner were working as Mahuts and the other 104 members were working in different occupations, which was not in consonance with Section 9A of the Act of 1926, which is as follows :

"9A. Minimum requirement about membership of a Trade Union - A registered Trade Union of workmen shall at all times continue to have not less than ten per cent, or one hundred of the workmen, whichever is less, subject to a minimum of seven, engaged or employed in an establishment or industry with which it is connected, as its members"

4. The petitioner submitted their affidavit-in-reply with Certificates showing

that 40 members of the petitioner were Mahuts.

5. The petitioner's counsel submits that that the information provided by the petitioner in their affidavit-in-reply regarding the number of Mahuts in their proposed Trade Union should be verified by the authorities in terms of Section 7 of the Act of 1926 and a fresh decision should be taken by the authorities, with regard to the prayer for registration of the Trade Union.

6. Mr. K. Gogoi, learned counsel for the respondent nos.1, 2 & 3, on the other hand submits that there is an alternative statutory remedy available in terms of Section 11 of the Act of 1926 and as such, the petitioner should take recourse to the alternative remedy available.

7. The petitioner's counsel, on the other hand submits that in terms of the judgment of the Supreme Court in ***M/s Godrej Sara Lee Limited vs. The Excise and Taxation Officer-cum-Assessing Authority & Others***, reported in ***AIR (2023) (SC) 781***, the Supreme Court has held that the exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case has not pursued the alternative remedy available to him/it, cannot mechanically be construed as a ground for its dismissal.

8. I have heard the learned counsels for the parties.

9. At the outset, it is seen that the issue pertains to disputed questions of fact, inasmuch as, the rejection of the petitioner's application for registration as a Trade Union has been made on the ground that only three members were working as Mahuts, which was not in consonance with Section 9A of the Act of 1926. On the other hand, the stand of the petitioner is that there are 40 Mahuts in the proposed Trade Union.

10. In view of there being disputed questions of fact, which would have to be considered, this Court is of the view that the petitioner would have to avail the alternative statutory remedy available under Section 11 of the Act of 1926. Further, as held by the Supreme Court in ***M/s Godrej Sara Lee Limited (supra)***, the exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition, ought not to be made in a routine manner. Further, it has held that one of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available.

11. Though this Court is aware that the availability of an alternative remedy would not oust the jurisdiction of the High Court and render a writ petition not maintainable, this Court is not inclined to exercise its discretion in the present case, keeping in mind the fact that there are disputed questions of fact which cannot be decided by this Court. Further, the issue of maintainability of the writ petition is also open, keeping in view the fact that the petitioner is not a

registered body. Accordingly, the petitioner and its members are given the liberty to approach the Appellate Authority under Section 11 of the Act of 1926.

12. In the event, the petitioner avails of the alternative remedy available, the Appellate Authority should dispose of the appeal expeditiously and preferably within a period of 6 (six) months from the date of receipt of the appeal.

13. The writ petition is accordingly closed.

JUDGE

Comparing Assistant