

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.23100 of 2018
Date of Decision: September 25, 2018

Nirman Karya Mazdoor Mistri Union

...Petitioner

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Gurinder Pal Singh, Advocate,
for the petitioner.

AMIT RAWAL, J.

Petitioner-registered union laid a challenge under Article 226 of the Constitution of India to the impugned Rule 28 (3)(iii) of the Haryana Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Rules, 2005 (for short, 2005 Rules) amended by notification dated 27.04.2018/30.04.2018 being violative of fundamental right.

It has been averred that the Haryana Government promulgated Act No.27 of 1996, i.e., Haryana Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 (for short, 1996 Act) for the purpose of registration of the building workers as beneficiaries. Section 12 of Chapter IV of 1996 Act provided the eligibility and procedure of building workers, who had completed a particular age and had been engaged in building or construction work for not less than 90 days, for registration as beneficiary. In order to give effect to the aforementioned

provision, the Government framed the rules, i.e., Rules 2005. As per sub-rule (3) of Rule 28 of 2005 Rules, for the purpose of registration, the construction workers can obtain the certificate from the employer or the contractor to the effect that they are construction workers. The aforementioned rules were amended vide notification dated 24.01.2018 (Annexure P-4) by which the power was given to the President/Vice President of the Registered Workers Unions. The aforementioned rules were further amended vide notification dated 27.04.2018/30.04.2018 (Annexure P-5), whereby few other authorities including the unions were given the power to issue certificate for the purpose of registration.

Mr. Gurinder Pal Singh, learned counsel representing the petitioner submitted that as a result of above mentioned notification (Annexure P-5), vast masses of the construction workers, who are not represented by the unions, cannot get registered until and unless the unions certify them that they belong to the aforementioned unions. Such an act on behalf of the government is ultra vires and discriminatory and liable to be set-aside as the element of bias or affiliation to a particular union would come into play. A person has a fundamental right to form an association/trade union as per provisions of 2(h) of the Trade Unions Act, 1926 (for short, 1926 Act) and their lawful objectives can be subject to certain reasonable guidelines, but not in the manner and mode. In essence, the petitioner has been deprived of his right to certify the status of his member for the purpose of being registered as beneficiary under the 1996 Act as the union is required to be affiliated with seven Central Trade Unions as named in the impugned notification.

It was next contended that the notification has curtailed the

right as envisaged under Article 19(1)(c) of the Constitution of India enabling a citizen to form an association or union. In support of the aforementioned contention, reference has been made to the judgment rendered by Hon'ble the Supreme Court in **A.P.Dairy Development Corporation Federation Versus B.Narasimha Reddy & Ors., 2011 (9) SCC 286** to contend that in case of A.P.Co-operative Societies Act, 1964 vis-a-vis Societies Registration Act, 1860, State cannot explore or force society to get itself registered under the statute for which Society has not applied and thus, urged this Court for setting-aside the impugned rule.

Arguments heard. Paper book perused.

It would be apt to reproduce sub-rule (3) of Rule 28 of 2018 Rules and as well as amended rule. The same read thus:-

“Haryana Building and Other Construction Workers (Regulation of Employment and Conditions of Service) rules, 2005, namely:-

Unamended rule:

Certificate from the employer or contractor that the applicant is a construction worker shall be produced alongwith the application for 20 registration. In case such a certificate is not available, a certificate issued by the registered construction workers unions or a certificate issued by Labour Officer or Assistant Director, Industrial Safety and Health of the concerned area or by the Executive Officer of the Panchayat may also be considered.”

Amended rule vide notification dated 24.01.2018 (Annexure P-4):

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(3) Certificate from the employer or contractor that the applicant is a construction worker shall be produced along with the application for registration. In case such a Certificate is not available, a Certificate issued by any of the following may also

be considered:-

- (i) Assistant Director, Industrial Safety and Health;
- (ii) Assistant Labour Commissioner/Labour Inspector;
- (iii) President/Vice President of the registered construction workers unions;
- (iv) District Development and Panchayat Officer;
- (v) Tehsildar/Naib-Tehsildar;
- (vi) Block Development and Panchayat Officer/Social Education and Panchayat Officer;
- (vii) Sub Divisional Engineer and Junior Engineer of all the Government Departments/Board/Corporations i.e. Public Works Department (Bridges and Road), Irrigation, Public health Engineering, Panchayati Raj, Haryana Urban Development Authority, Police Housing Corporation, Haryana State Industrial and Infrastructure Development Corporation, Housing Board Haryana, Haryana State Agricultural Marketing Board, Haryana Tourism Corporation, Haryana Warehousing Corporation, Dakshin Haryana Bijli Vitran Nigam Limited, Uttar Haryana Bijli Vitran Nigam Limited, Haryana Vidyut Prasaran Nigam Limited, Haryana Power Generation Corporation Limited etc.;
- (viii) Secretary, Executive Officer, Municipal Engineer, Junior Engineer of the Municipal Committees, Municipal Councils and Municipal Corporations in the State;
- (ix) Kanoongo and Patwari;
- (x) Panchayat Secretary/Gram Sachiv.”

Amended rule vide notification dated 27.04.2018/30.04.2018

(Annexure P-5):

“(iii) State President and State General Secretary of the construction workers trade unions affiliated with the seven reputed Central Trade Unions, namely, All India United Trade Union Centre (AIUTUC), All India Trade Union congress (AITUC), Bharatiya Mazdoor Sangh (BMS), Centre of Indian Trade Unions (CITU), Hind Mazdoor Sabha (HMS), Indian

National Trade Union Congress (INTUC) and United Trade Union Congress (UTUC).”

We are afraid, the argument of the learned counsel for the petitioner is not sustainable but ill founded as for the purpose of registration, certificate is not only confined to the authorities mentioned in sub-rule (iii), but may result into invocation of element of unreasonable power, rather the aforementioned amended rule would enable the State Government to identify the eligibility of the candidate for the purpose of claiming benefits after registration.

No doubt, as per Section 2(h) of 1926 Act, Trade Union means any combination, whether temporary or permanent, formed for the purpose of regulating the relations, but the objective of the amendment appears to be to streamline procedure for issuance of certificate and cannot be said to be violative of Article 19(1)(c) of the Constitution or exercise of any undetermined power or taking away any power of the present union from issuing certificate.

There is no dispute to the ratio decidendi culled out in the aforementioned judgment, but the matter in controversy before Hon'ble the Supreme Court was with regard to the applicability of the amendment with retrospective effect. The option given to the society to issue certificate cannot be said to be suffering from any element of colourable exercise of powers. Para 34 of the judgment (supra) reads thus:-

“The restrictions so imposed by the Act 2006, with retrospective effect, extending over a decade and importing the fiction that the societies would be deemed to have been registered under the Act 1964, without giving any option to such societies suggest the violation of Article 19(1)(c) and are not saved by clause (4) of Article 19 of the Constitution. It is by

no means conceivable, that the grounds on the basis of which reasonable restrictions could be invoked were available in the instant case.”

As an upshot of our findings, we do not find the amendment to be ultra vires or in violation of the fundamental right. No ground for interference is made out. Resultantly, the writ petition is dismissed.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

September 25, 2018
ramesh

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No