

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2019

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

C.M.A.NO.147 OF 2017

The Tamilnadu Thiraippada Iyakkunargal Sangam
Represented by its Secretary
No.168, Anthony Salai,
Devi Karumariamman Nagar,
Valasaravakkam, Chennai - 600 087. ... Appellant

Versus

The Additional Registrar of Trade Union - I
D.M.S. Campus,
Teynampet,
Chennai - 600 006. ... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 11(1) of the Trade Union Act, 1926, against the order dated 09.08.2016 made in A3/0827/16, passed by Additional Registrar of Trade Union - I, Chennai- 600 006.

For Appellant : Mr.S.Senthilnathan

For Respondent : Mr.S.Jaganathan
Government Advocate (CS)

J U D G M E N T

The appellant is the Trade Union registered under the Trade Union Act, 1926. They failed to submit Form-E returns containing general statement, audited in the prescribed manner, of all receipts and expenditure of every registered Trade Union during the year ending on the 31st day of December. Since returns were not filed for the years 2013, 2014 and 2015, the respondent-Additional Registrar of Trade Unions-I, Chennai, in his proceedings A3/0827/16, dated 09.08.2016, has cancelled the registration. Aggrieved over the same, the appellant is before this Court.

2. Learned counsel for the appellant would vehemently contend that the order came to be passed without jurisdiction and without adhering to the mandatory procedures laid down under the Trade Unions Act, 1926 (Shortly "the Act") viz., (a) as per Section 28 of the Act, Trade Union shall file its returns every year; (b) as per Section 10(b) of the Act, Registrar is empowered to withdraw or cancel the registration on the application submitted by the Trade Union or if the Registrar is satisfied that the certificate has been obtained by fraud or mistake or in a circumstances where the Trade Union itself ceased to exist or ceases to have required number of the members. Whereas in the impugned order, the cancellation was made for change of address. Even assuming that there is a contravention of statutory provisions, it is mandated that two months notice in writing shall be given to the Trade Union before cancellation or withdrawal of the registration. In so far as the non-filing of returns and change of address is concerned, they are all curable defects and does not warrant cancellation of registration. Therefore, he relied on a judgment of this Court in W.P.No.849 of 2017 dated 15.03.2017 wherein it is held that in cases of curable defects and procedural irregularities opportunity should be given to the parties, before taking a stringent action.

3. Learned Government Advocate appearing for the respondent would contend that the appellant / Trade Union deliberately has not filed any returns for three consecutive years. Therefore, the authority has rightly come to a conclusion that Trade Union ceased to exist and therefore, the order of cancellation is valid.

4. Heard the submissions made on either side and perused the materials available on record.

5. Section 10 of the Act prescribes the circumstances in which the Certificate of Registration can be cancelled or withdrawn viz., (i) the Trade Union itself can voluntarily withdraw; (ii) when the certificate was obtained by fraud or mistake or Trade Union itself has ceased to exist or willfully contravened the provisions even after notice or for lack of required membership. As per Section 10 of the Act, it is mandatory to issue two months notice before cancelling or withdrawing the registration.

6. As per Section 28 of the Act, when it is mandatory for the every Trade Union to submit returns in Form - E every year ending with 31st of December, failure to do so attracts penalty under Section 31 of the Act. The penalty will be Rs . 500/- for deliberate omission of filing the returns.

7. In the instant case, for the omission of filing returns for the years 2013, 2014 and 2015, the Authority has cancelled the registration. The statute does not provide any power on the Authority to cancel the registration for the irregularities committed by the Trade Unions. It goes without saying that any punishment shall be imposed only after giving ample opportunity to the parties. In the instant case, a reading of the impugned order by itself shows that no such opportunity was given and therefore, the punishment of cancellation of registration imposed by the Authority for non-filing of returns under Section 28 of the Act, is without jurisdiction and violative of principles of natural justice. Secondly, as the cancellation of registration under Section 10(b) of the Act, as stated supra, shall be for the fraud or mistake or in a situation where the Union itself ceased to exist or for want of required number of membership, it is not the case of the respondent that the appellant / Union falls within any of the criteria mentioned under Section 10(b) of the Act. The reasons stated for cancellation is that they have not intimated the change of address within 14 days. Even assuming that the power is conferred on the Authority to cancel the registration, as per Section 10(b) of the Act, two months notice on the proposal to withdraw or cancel the certificate of registration, shall be given by the Registrar and it is a mandatory requirement and non-compliance of such requirement vitiates the impugned order.

8. During the course of arguments, learned counsel for the appellant would produce the acknowledgment of the registration for having received the returns in Form-E in compliance with Section 28 of the Act and the address of the Trade Union was also mentioned therein. In such circumstances, the order passed by this Court in W.P.No.849 of 2017 dated 15.03.2017 holding it as only a procedural error, has to be applied in this case also. For the curable defects, the Authority shall not impose capital punishment, without giving opportunity to the parties.

9. In the above facts and circumstances of the case, this Court is of the considered view that the cancellation of registration for contravention of the procedure laid down under Section 28 of the Act is without jurisdiction and the punishment imposed under Section 10(b) of the Act, without issuing notice to the parties, is violative of principles of natural justice and therefore, the impugned order dated 09.08.2016 passed by the respondent is set aside.

10. In fine, the Civil Miscellaneous Appeal is allowed.
No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

TK
To

The Additional Registrar of Trade Union - I
D.M.S. Campus,
Teynampet,
Chennai - 600 006.

+1 CC to Spl. Govt. Pleader(CS)sr 30037
+1 CC to Mr.S.Senthilnathan, Advocate sr 29700.

C.M.A.NO.147 OF 2017

SPD(CO)
SP(15/05/2019)



WEB COPY