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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision :- 10.10.2019

+ W.P.(C) 10254/2019 & CM No.42275/2019 (stay)
DELHI STATE ELECTRICITY WORKERS UNION AND ORS.

..... Petitioners

Through: Mr. Salim A. Inamdar, Mr. M.H. Khan and Mr. Rishikesh Rajan, Advs.

versus

GOVERNMENT OF NCT OF DELHI AND ANR..... Respondents

Through: Mr. Anuj Aggarwal, ASC with
Mr. Deepak Shriastava, Adv. for R1 & R2.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the Delhi State Electricity Workers Union and its office bearers have sought quashing of the order dated 31.07.2019 passed by the Deputy Registrar (Trade Union), Government of NCT of Delhi, i.e., respondent no.2, refusing to register the amendments to the Rules of the petitioner No.1/Union as adopted by its General Council on 05.08.2018. The petitioners have also sought a direction to the respondent no.2 to forthwith register the aforesaid amendments to the rules.

2. Learned counsel for respondents, who appears on advance notice, submits that since the petitioner has raised a purely legal

question which has already been decided by a Division Bench of this Court, he does not propose to file any counter affidavit.

3. Accordingly, with the consent of the parties, the writ petition is taken up for final hearing.

4. The petitioner no.1 is a trade union representing the rights and interests of the employees working in various electricity supply corporations/companies and was duly registered with the Registrar of Trade Union on 07.05.1942. The petitioner no.1 has been holding regular elections and has been filing its returns as applicable to registered trade unions. Pursuant to the public notice dated 25.05.2018, the petitioner no.1 approved certain alterations to the rules of its constitution in its general body meeting held on 20.07.2018. Subsequently, these alterations were tabled for approval at the petitioner's general body meeting held on 25.08.2018 and, upon being found to be in order, were approved by its General Council. The petitioner claims that information about the said amendment and its approval by the General Council was immediately communicated to the respondent no.2 but since it did not have any documentary proof in this regard, written communication of the said amendment was sent to the respondent no.2 on 28.01.2019.

5. Upon receipt of the said communication, the respondent no.2 without seeking any clarification whatsoever from the petitioner has straight away passed the impugned order rejecting the petitioner's request for registration of the amendment by observing as under:-

“This is in reference to revised rules of Delhi State Electricity Workers Union which was filed on dated 28.2.2019 in the office of Dy. Labour Commissioner East and North East Distt.

Under the signature of Sh. Kuldeep Kumar, General Secretary.

On perusal of your aforesaid documents, it is observed that as per the Section 28 (3) of Trade Union Act, 1926 alteration in rules of your Union Constitution has not been intimated to the Registrar/Dy. Registrar Office within 15 days of making such alteration. Also there is no prayer in the said intimation letter for registering such alteration in the register/record of the Registrar/Dy. Registrar Trade Union.

Simply by way of giving intimation in the Registrar/Dy. Registrar office of revised rules, does not automatically allow revision in the rules unless the proposed amendment in constitution is registered by the Registrar/Dy. Registrar, Trade Union as per the rules.

In view of above, at this stage, revision of rules in the constitution of the union is null and void as the amendment of rules has not been registered in terms of Regulation no.9 of the Central Trade Union Regulation, 1938”

6. Learned counsel for the petitioner submits that the respondent no.2 while rejecting the petitioner’s request failed to appreciate that Section 28 of the Trade Unions Act, 1926 (hereinafter referred to as ‘the Act’) on which reliance has been placed in the impugned order only provides for communication and registration of amendments and does not entitle the Registrar to decline registration of amendments made belatedly. Even otherwise Section 28 (3) of the Act which prescribes that a copy of every alteration/amendment made in the rules of a registered Trade Union should be communicated to the Registrar within 15 days, has to be read in conjunction with Regulation 9 of the Delhi Trade Union Regulation 1927(hereinafter referred to as the ‘Regulations’). This Regulation clearly states that

on receiving a copy of alteration made in the rules of Trade Union, the Registrar unless he has reason to believe that the alteration has not been made in the manner provided by the rules of trade union, shall register the alteration. He submits that any delay in communicating the amendments could not have been treated as fatal. In case the respondent no.2 was of the opinion that there was any delay on the petitioner's part to communicate the amendments, the same could be still registered subject to imposition of penalty under Section 31 of the Act. He thus contends that the refusal of respondent no.2 to register the amendments is not only without jurisdiction but is contrary to the scheme of the Act and has caused grave prejudice to the petitioner union as its general council has already approved the said amendments.

7. In support of his aforesaid contention, he places reliance on the decision of a Division bench of this Court in ***Delhi Hindustani Mercantile Association and Anr versus Delhi Administration & Anr*** 1990 LLR (Delhi) 234.

8. Mr. Anuj Aggarwal appearing on behalf of the respondents is unable to dispute the position that the impugned order is contrary to the ratio of the decision in ***Delhi Hindustani Mercantile Association (supra)***. He, however, opposes the prayer of the petitioner seeking a direction to the respondent no.2 to register the amendment to the Rules.

9. I have heard the learned counsel for the parties and with their assistance perused the record.

10. Before dealing with the issues raised in the present petition, it

would be appropriate to refer to Sections 28 (3) & 31 of the Act as also to Regulation 9 of the Regulations, which read as under:-

“Section 28...

[3] A copy of every alteration made in the rules of a registered Trade Union shall be sent to the Registrar within fifteen days of the making of the alteration”

“Section 31. Failure to submit returns.—

(1) If default is made on the part of any registered Trade Union in giving any notice or sending any statement or other document as required by or under any provision of this Act, every 1[office-bearer] or other person bound by the rules of the Trade Union to give or send the same, or, if there is no such 1[office-bearer] or person, every member of the executive of the Trade Union, shall be punishable with fine which may extend to five rupees and, in the case of a continuing default, with an additional fine which may extend to five rupees for each week after the first during which the default continues: Provided that the aggregate fine shall not exceed fifty rupees.

(2) Any person who wilfully makes, or causes to be made, any false entry in, or any omission from, the general statement required by section 28 or in or from any copy of rules or of alterations of rules sent to the Registrar under that section, shall be punishable with fine which may extend to five hundred rupees.

“ Regulation 9 (1) On receiving a copy of an alteration made in the rules of a Trade Union under 28 (3), the Registrar, unless he has reason to believe that the alteration has not been made in the manner provided in the rules of the Trade Union, shall register the alteration in the register to be maintained for this purpose and shall notify the fact that he had done so to the Secretary of the Trade Union”

11. A bare perusal of these provisions makes it evident that there is no provision in the Act for rejection of the amendments merely on the ground of delay. In fact, the only ground on which an

amendment/alteration can be rejected is set out in Regulation 9, which clearly states that the Registrar will register every alteration made in the Rules of the trade union, unless he has reason to believe that the same has not been made in the manner prescribed in the rules of the trade union. In the present case the impugned order does not disclose any such reason and the registration of the amendments has been admittedly refused only on the ground of delay, which is impermissible.

12. In my view, the respondent no.2 while rejecting the petitioner's request has acted in a most mechanical manner and has failed to appreciate that any delay in communicating the factum of such amendment could not be the sole ground to refuse registration of the amendments. The respondent no.2 has also failed to appreciate that Section 31 of the Act is meant to cater to such exigencies where the parties may not comply with the prescribed deadlines, in such situations the documents filed belatedly can be accepted by the Registrar after imposition of suitable penalty. Reference may also be made to the observation of Division Bench in ***Delhi Hindustani Mercantile Association (supra)*** which read as under:

“A bare reading of the relevant provisions of the Act brings out that the Registrar has no authority to reject the amendment or direct that the application seeking amendments to be incorporated be rejected merely on the ground that the application was filed late. In view of Section 31 of the Act (quoted above) it was open to him to impose a penalty as provided therein. Instead of doing that the Registrar has passed the impugned order, which in our view, he was not authorised to do so. On this short ground the petition is to be allowed.”

13. For the aforesaid reasons, the impugned order is wholly unsustainable and is accordingly set aside. The matter is remanded back to respondent no.2 for taking a fresh decision on the petitioner's request in accordance with law. The said decision shall be taken within a period of four weeks.

14. The writ petition alongwith pending application is disposed of in the aforesaid terms.

OCTOBER 10, 2019
'SDP'

REKHA PALLI, J.