

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18197 of 2018

***B & A Packaging India Ltd. Workers
Union, Balasore***

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Petitioner

*Ms. Sarada Dash, Advocate
on behalf of Mr. Alok Kumar Panda, Advocate*

Versus

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Opposite Parties

- 1. State of Odisha***
- 2. Registrar of Trade Unions-cum-
Labour Commissioner, Bhubaneswar***
- 3. Addl. Registrar of Trade Unions-
cum-Deputy Labour Commissioner,
Jajpur Division, Jajpur Road, Jajpur***
- 4. Asst. Labour Commissioner,
Balasore***

*Ms. S. Patnaik,
Additional Government Advocate*

CORAM:

**JUSTICE S. TALAPATRA
JUSTICE SAVITRI RATHO**

**ORDER
03.11.2022**

Order No.

04.

1. This matter is taken up through Hybrid Mode.
2. Heard Ms. Sarada Dash, learned counsel appearing for the petitioner on instruction of Mr. Alok Kumar Panda, learned counsel appearing for the petitioner and Ms. S. Patnaik, learned Additional Government Advocate appearing for the Opposite Party.
3. By means of this writ petition, the petitioner, a union of workers has challenged the order dated 09.10.2018 of the Additional Registrar of Trade Unions-cum-Deputy Labour

Commissioner, Jajpur Division, Jajpur Road, Jajpur, Annexure-3 to the writ petition. By the said order, which has been communicated to the petitioner, it has been observed that the petitioner does not conform to the minimum membership criteria as stipulated under Section 4 of the Trade Unions Act, 1926. It has been further observed that the Executive Committee of the applicant-trade union has not been constituted in accordance with the provisions of the Trade Unions Act, 1926 as amended. But no specific reference to deviation is available in the order.

4. Ms. Sarada Dash, learned counsel has submitted that the petitioner has complied all the requirements of Section 4 of the Trade Unions Act, 1926 which stipulates that any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under the said Act, provided that no Trade Union of workmen shall be registered unless at least ten per cent or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration. It has been further provided that no Trade Union of workmen shall be registered unless it has on the date of making application not less than seven persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.

5. According to Ms. Sarada Dash, learned counsel, the application was made in terms of these decisions with a catalogue of 68 workmen who are the members of the said union (Annexure-1 to the writ petition).

6. We have perused the documents those have been filed for purpose of the registration of the petitioner as a Trade Union. The petitioner has enclosed the enquiry report dated 31.07.2018 under Annexure-1 to the writ petition, submitted by the District Labour Officer, Balasore. From the said report dated 31.07.2018, it appears that the District Labour Officer, Balasore has observed as follows:-

“It is ascertained during verification/enquiry that the records/registers are found in order and the applicant members are individually interrogated regarding their willingly and voluntarily subscription of their names for the applicant trade union. As stated by the General Secretary the applicant members are/were not the members of any other trade union and are eligible to form a Trade Union as per the provisions of the Trade Unions Act, 1926.”

7. True it is that in the said report it has been marked that only Rs. 1,820/- was found as cash in hand and the petitioner does not have any account in any bank. The assets and liabilities of the union have not been audited. That apart the union has not completed one year on the day of making verification for registration.

8. It has further surfaced from the said report that on 17.12.2017, the members of the said trade union had their 3rd General Body meeting and 9 persons were elected in the Executive Committee. Name of those persons are as follows:

(i) Madan Mohan Dutta	President
(ii) Niranjana Giri	Vice President
(iii) Goura Gopal Sahu	Working President
(iv) Siddheswar Praharaj	General Secretary
(v) Santosh Swain	Assistant Secretary
(vi) Ashok Kumar Parida	Treasurer
(vii) Basudev Moharana	Executive Body Member
(viii) Suratha Pradhan	Executive Body Member
(ix) Bikash Kumar Dalei	Executive Body Member

9. On scrutiny of the entire record, we did not find any adverse opinion against the petitioner.

10. From perusal of the said enquiry report, the order of rejection under Annexure-3 to the writ petition, has been based observing that, the petitioner cannot be registered as a trade union. The opposite parties have filed their counter affidavit on 11.01.2019. In the said counter affidavit, at para 9, the opposite parties have asserted thus:

“Due to certain lacuna, omission, in the report of the District Labour Officer, Balasore, he was again asked vide Letter No. 4726 dtd. 20.08.2018 to verify and report to opposite party no.3 regarding compliance of

Sec-4 of the Trade Unions Act, 1926 by the applicant union with regard to its compliance of minimum membership criteria by the trade union in the industry/ establishment of B & A Packaging India Limited and each of the contractor's establishments wherein the worker members of the applicant union were reportedly engaged. The District Labour Officer, Balasore submitted membership position in each of the establishments after ascertaining the details in his Letter No. 3496 dated 03.09.2018 under Annexure-C/3 to the counter affidavit."

11. From the Letter dated 03.09.2018 (Annexure-C/3 to the counter affidavit), it appears that the M/s. B & A Packaging India Limited had deployed/engaged 257 contract labours through the contractors. Apart that, the management had engaged 65 permanent & trainee employees in the establishment. A copy of the supplementary report enclosed as Annexure-A with the said communication dated 03.09.2018. Thus, the total number including the trainees came to be 322. 10% of the 322 is 32.2. For the purpose of accounting that will be 32. We find that a catalogue of 68 members, which is part of Annexure-1, was placed before the Additional Registrar of Trade Unions-cum-Deputy Labour Commissioner, Jajpur Division, Jajpur Road, Jajpur the compliance of requirement of Section 4 of the Trade Union Act, 1926.

12. In this backdrop as narrated above, Ms. Patnaik, learned counsel has contended that the order of Additional Registrar of Trade Unions-cum-Deputy Labour Commissioner, Jajpur Division, Jajpur Road, Jajpur is amenable to appeal under Section 11 of the Trade Unions Act, 1926.

13. Section 11 of the Trade Unions Act, 1926 clearly provides that any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may, within such period as may be prescribed, should file an appeal to the appropriate authority.

Sub-Section 4 of Section 11 of the Trade Unions Act, 1926 provides further that if the person being aggrieved by dismissal of the appeal shall have a right to appeal to the High Court.

14. Ms. Patnaik, learned counsel had thus raised a jurisprudential objection that without following the procedure, the petitioner has straightway approached this Court. As such, this petition may not be entertained by this Court.

15. It is to be noted that the petitioner has filed a rejoinder and stated that this petition is not an appeal under Section 11 of the Trade Unions Act, 1926. It is an application under Section 226 of the Constitution of India seeking judicial review of an ambiguous order as the authorities as designated have failed to exercise the jurisdiction as provided by law. Para 7 of the said rejoinder lays down that even if an alternative remedy is available, this Court has power to adjudicate the grievance of the petitioner. In order to

provide immediate and effective justice in which the petitioner has approached this Court. Hence, it cannot be said that due to availability of alternative remedy, the writ petition is not maintainable.

16. Having appreciated the submission of the learned counsel for the parties and considered the nature of the dispute raised in the writ petition, we are of the view that since the order of the Additional Registrar of Trade Unions-cum-Deputy Labour Commissioner, Jajpur Division, Jajpur Road, Jajpur, under Annexure-3 to this writ petition, has been challenged on the ground of non-disclosure of any reason for rejection, we may exercise our authority as conferred by Article 226 of the Constitution. How the petitioner did not conform to the requirement of Section 4 of the Trade Unions Act, 1926, has not been mentioned at all. Any statutory authority has a duty to give reasons in a manner which is understandable, while rejecting any application or taking a decision. We have come across that the only ground of rejection as gathered from the records might be so far the membership is concerned that the petitioner has not conformed to the requirement of Section 4 of the Trade Unions Act, 1926. But the records stand to show the contrary position and as such, we are of the further view that without taking a technical approach regarding the jurisdiction, it would better serve the purpose of justice if the entire matter is remanded to the Additional Registrar of Trade Unions-cum-Deputy Labour Commissioner, Jajpur Division, Jajpur Road, Jajpur for

reconsideration and passing appropriate order in accordance with law. The petitioner is given liberty to file a supplementary application for purpose of placing the relevant records as required for appreciation whether the petitioner has conformed to the requirement of Section 4 of the Trade Unions Act, 1926. The Additional Registrar of Trade Unions-cum-Deputy Labour Commissioner, Jajpur Division, Jajpur Road, Jajpur shall following due process as described, pass the appropriate order.

17. It is made clear that in ordinary course, if it is found that the membership of the trade union is more than 10%, the said trade union is to be registered. It is well known that 10% of minimum strength of an industry has been kept so as to stop mushrooming of the trade unions. But we find the petitioner has enough number of members to have the registration and that has been vouched by the District Labour Officer in his report.

18. The subsequent report of the District Labour Officer anyway did not nullify his first report and as such, the Additional Registrar of Trade Unions-cum-Deputy Labour Commissioner, Jajpur Division, Jajpur Road, Jajpur may take into consideration of the said reports including the report which had been filed on 03.09.2018 (Annexure C/3 to the counter affidavit). If the petitioner prefers to file the supplementary application, as indicated above, that shall be filed within a period of 30 days from today directly to the Additional Registrar of Trade Unions-cum-Deputy Labour Commissioner, Jajpur Division, Jajpur Road, Jajpur. The

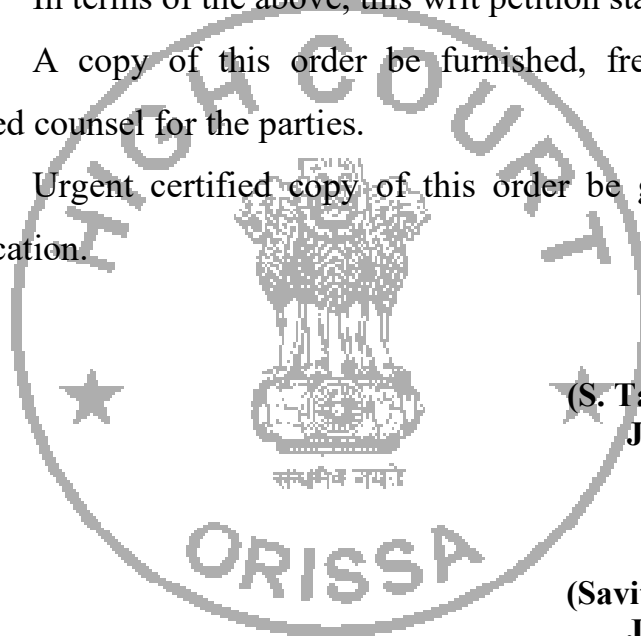
Additional Registrar of Trade Unions-cum-Deputy Labour Commissioner, Jajpur Division, Jajpur Road, Jajpur shall pass the final order in terms of the provisions of the Trade Unions Act, 1926 within a period of 30 days from the date of receipt of such application or within 60 days from today whichever is earlier.

19. It is made absolutely clear that the time for inquiry if any, is included in the time frame.

20. In terms of the above, this writ petition stands disposed of.

21. A copy of this order be furnished, free of cost, to the learned counsel for the parties.

22. Urgent certified copy of this order be granted on proper application.



(S. Talapatra)
Judge

(Savitri Ratho)
Judge

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