

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.2879 OF 2016

1. National Organization of Insurance
Workers, Registration No.NGP 5330,
through its the then General Secretary, at
Presnt President of the petitioner
union,Shri Atul Deshpande, R/o C/o Plot
no.59, Kirti Apartment, Pande Layout,
Khamla, Nagpur
2. Shri M.M. Joshi, Office Secretary of the
Petitioner Union, Aged about- Major,
Occupation- Service, R/o C/o Shri Atul
Deshpande, Resident of C/o Plot No.59,
Kirti Apartment, Pande Layout, Khamla,
Nagpur

...PETITIONERS

---VERSUS---

1. The Deputy Registrar under the Trade
Unions Act, 1926 and Assistant Labour
Commissioner, Administrative Building
Number-2, Near Zilla Parishad, Nagpur,
Civil Lines, Nagpur-440001.
2. National Organization of Insurance
Workers, (Bhartiya Mazdoor Sangh),
Central Office, Dattopant Thengadi
Bhawan, 27, Deendayal Upadhyay Marg,
Rouse Avenue, New Delhi – 110002
Through its General Secretary.
3. Bhartiya Mazdoor Sangh, Central Office,
Dattopant Thengadi Bhawan, 27,
Deendayal Upadhyay Marg, Rouse
Avenue, New Delhi – 110002
Through its General Secretary.

4. Life Insurance Corporation of India,
Central Office, "Yogakshem Building",
Jeevan Veema Marg, Fort, Mumbai-
440041 Through its Chairman.
5. Life Insurance Corporation of India,
Divisional office, S.V. Patel Marg, National
Insurance Building, Kingsway, Nagpur
through its Senior Divisional Manager.
6. Hon'ble Member In-charge, Industrial
Court, Nagpur, Opposite Fire Engineering
Training School, Near Hislop College,
Civil Lines, Nagpur.

...RESPONDENTS

Shri Anand Jaiswal, Senior Advocate a/b Shri Swapnil Pathak, Advocate for
the petitioners.

Shri Amit Madiwale, AGP for respondent nos.1 and 6.

Shri Atul Pathak, Advocate for respondent nos.2 and 3.

Shri Ritesh Badhe, Advocate for respondent nos.4 and 5.

CORAM : AMIT BORKAR, J.

DATED : JULY 22, 2022.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith by consent of the parties.

2. By this writ petition under Articles 226 and 227 of the Constitution of India, petitioners are challenging the judgment and order dated 10.12.2015 passed by respondent no.1 cancelling the registration of petitioner no.1-Union in the exercise of power under Section 10(2) of the Trade Unions Act, 1926 (for short, 'the

said Act').

3. Respondent no.2 applied with respondent no.1 on 14th September 2014, alleging that petitioner no.1-Trade Union was registered by practising fraud on the Registrar. According to respondent no.2, respondent no.2-Union has existed for the last 45 years and has an area of operation of entire India. Moreover, it is alleged that the name of respondent no.2-Union is similar to the name of petitioner no.1, which misleads employees, management and those related to the affairs of Union and therefore prayed for cancellation of registration in the exercise of power under Section 10(2) of the said Act.

4. Respondent no.1 issued notice to petitioners. Petitioners filed a reply before respondent no.1. They pointed out that registration can be cancelled only if it is proved that it has been obtained by fraud or mistake or that the Trade Union has ceased to exist or has willfully and after notice from the Registrar contravened any provision of the said Act. It is also stated that respondent no.2 has no locus to apply for cancellation of registration of petitioner no.1-Union as respondent no.2 is not registered under the provisions of the said Act.

5. Respondent no.1, after giving a hearing to both sides, cancelled the registration of petitioner no.1-Union on the ground that petitioner no.1-Union had obtained registration without disclosing similarity in the names of petitioner no.1 and respondent no.2-Union. The said order under Section 10(2) of the said Act is the subject matter of the present petition.

6. Shri Anand Jaiswal, learned Senior Advocate on behalf of petitioners, submitted that in the absence of registration under the provision of the said Act. Therefore, respondent no.2 had no locus to apply for cancellation of registration of petitioner no.1-Union. He submitted that petitioner no.1 had furnished all the required information along with the statutory form. Therefore, there is no suppression of material fact by petitioner no.1. He submitted that respondent no.2 is the federation of Unions in India and operates at the national level. He submitted that there is no finding recorded by respondent no.1 in relation to Regulation-8 of Bombay Trade Unions Regulations, 1927.

7. *Per contra*, Shri Atul Pathak, learned Advocate for respondents nos.2 and 3, submitted that registration of similar names with that of respondent no.2 creates confusion amongst employees, management and people all associated with the affairs

of respondent no.2. He submitted that if similar names had been pointed to respondent no.1, the registration order could not have been passed. He submitted that respondent no.2 does not need to be registered under the provision of the said Act. He submitted that no interference is called for in the impugned order.

8. The rival contentions fall for my consideration. Undisputedly, respondent no.2 is neither registered under Trade Unions Act nor registered under the provision of any other Act. A registered Trade Union is a statutory legal entity it can sue or sued in its own name. An unregistered Trade Union is not a juristic person. Such Union cannot initiate judicial proceedings. It is a registered Trade Union differentiate from its members. It is only on registration that a Union enjoys several statutory rights like creating a fund for political purposes and using the general fund for a specified purpose. Unregistered Trade unions like respondent no.2 are not legal entities separate from their members. It is only a voluntary association having no corporate existence. It can hold property but cannot sue or sued in its name. Such an unregistered Trade Union cannot represent its members in a trade dispute, although registration is not compulsorily for recognition by the employer. To claim rights benefits under the said Act's provisions, a Union has to be registered under the provisions of the said Act.

9. This Court, in the case of **National Organization of Bank Workers Federation of Trade Unions Vs. Union of India**¹ held that the Federation of Union, which was the petitioner having not been registered as a Trade Union, is not a juristic person and therefore cannot file a writ petition.

10. The Apex Court, in the case of **B. Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Association & Others**² held that under the Trade Unions Act, 1926, a registered Trade Union or Trade Union whose registration has been cancelled has no manner of right whatsoever. Even rights available under the Industrial Disputes Act have been limited only to those Trade Unions which are registered under the Trade Unions Act, 1926 by insertion of clause 2(QQ) of the Industrial Act, 1947.

11. The Apex Court, in the case of **R.G. D'souza Vs. Poona Employees Union, Yerawada**³ held that under Section 10 of the said Act, certificate of registration of Trade Union may be withdrawn or cancelled by Registrar of Trade Unions either on the application of trade union inviting the attention of Registrar of

1 1993(1) CLR 995

2 2006 (11) SCC 731

3 2015(2) SCC 526

Trade Unions or Registrar may *suo motu* take cognizance under the said section. It is held that there is no mention in the said provision about the cancellation of registration of Trade Union on an application by any other person.

12. In view of the ratio laid down by the Apex Court in the case of **B. Srinivasa Reddy** (supra), holding that under Trade Unions Act, 1926, an unregistered Trade Union or Trade Union whose registration has been cancelled has no manner of rights whatsoever, respondent no.2 had no locus to a complaint seeking cancellation of registration.

13. The Industrial Court, in an appeal challenging the cancellation of registration, has not properly considered the aspect of absence of registration of respondent no.2. The Industrial Court has referred to the fact that the member of respondent no.2 is registered under the provisions of the said Act.

14. It appears that petitioner no.1 Union has submitted complete information as required by the statutory form annexed with the application for registration; it cannot be said that there was the suppression of material fact by petitioner no.1. Even

otherwise, respondent no.2, in the absence of registration under the provisions of the said Act, is not entitled to enforce any right conferred under the provisions of the said Act including a right to apply for cancellation of registration of Union registered under the said Act. Therefore, I am of the opinion that the judgment of the Industrial Court dated 30th April 2016 in Trade Union Appeal No.1 of 2015 and the order of cancellation passed by respondent no.1 dated 10th December 2015 cancelling registration under Section 10(2) of the said Act are quashed and set aside.

15. Rule is made absolute in the above terms. The petition stands disposed of in the above terms. Pending civil application (s), if any, stand disposed of.

JUDGE

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