

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 9483 of 2023

Tapas Kumar Kundu & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharya, Sr. Advocate,
Mr. Rananeesh Guha Thakurta
Ms. Senjuti Sengupta
Ms. Dipa Ray
... For the petitioners.

Mr. Debasish Ghosh
Mr. Debapriya Chatterjee
... For the State.

1. The present writ application has been filed *inter alia* challenging a notice dated 21st June, 2022, issued in Form E by the respondent no.2. The petitioners say that the petitioner no.2 is a Trade Union, duly registered under the Trade Unions Act, 1926 (hereinafter referred to as the “said Act”). The petitioner no.2 claims to be campaigning the cause of the employees, employed at the Damodar Valley Corporation.
2. Mr. Bhattacharya, learned senior advocate representing the petitioners, by drawing attention of this Court to page 22 of the writ application submits that on 21st June, 2022 the petitioners were served with a notice issued in Form-E, by the Registrar of Trade Unions, Government of West Bengal, calling upon the petitioner no.2 to show cause why the Certificate of Registration of

the Trade Union be not withdrawn, for the petitioners' failing to comply with the following:

Grounds:

1. Non-submission of Annual Returns for more than 3 years.
2. Non-compliance with section 9A of the Trade Unions Act, 1926, as amended.
3. The said notice inter alia further records that the Registrar shall proceed on 30th August, 2022, to cancel the registration unless cause is shown. It is submitted that immediately upon the receipt of the aforesaid notice, the petitioner no.2 by a communication in writing dated 12th July, 2022 had brought to the notice of the Registrar of Trade Union that the petitioner no.2 had been regularly submitting its returns and the returns for the year 2018, 2019 and 2020 had been submitted on 18th June, 2019, 27th December, 2020 and 1st November, 2021, respectively. Photocopies of the returns were also enclosed along with the aforesaid communication. It was also highlighted in the aforesaid communication that as per the amended provisions of Section 9A of the said Act, since the returns filed by the petitioners show audited membership strength for each year, the petitioners cannot be said to have violated the provisions of Section 9A of the said Act.

4. It is submitted that no opportunity of hearing was given to the petitioners. Unfortunately, by a communication in writing dated 18th January, 2023 which is at page 30 of the writ application, the petitioners were served with a response by the Registrar of Trade Unions, West Bengal, recording certain reasons which were extraneous to the ground provided in Form-E, for purported cancellation of the registration of the petitioners' Trade Union.

5. Mr. Bhattacharya, by drawing attention of this Court to the aforesaid communication submits that the Registrar of Trade Unions by such communication had identified certain alleged shortcomings which did not feature in the notice to show cause issued in Form E dated 21st June, 2022. By drawing attention to a website publication of the Registrar of Trade Unions at page 24 of the writ petition it is submitted that the petitioner no.2's registration has been cancelled.

6. It is submitted that without giving any opportunity of hearing to the petitioners, the aforesaid cancellation has been effected. In any event, no notice in Form-F as is required under the Act, has till date been served on the petitioners. The aforesaid communication dated 18th January, 2023, also cannot be construed as a notice of cancellation. In any event, till date, the petitioners are in the dark with regard to the reasons for cancellation of

the registration of the petitioners' Trade Union. On account of the aforesaid the petitioners have been rendered remediless

7. Mr. Chatterjee, learned advocate representing the respondent nos. 1 and 2, on the other hand, submits on instruction that the petitioners' registration has not been cancelled. He says that the respondents are in the process of giving a further opportunity of hearing to the petitioner no.2 to take further steps in the matter. He says that the instant writ application is premature. No notice in Form F has been issued. He submits that the aforesaid writ application should be dismissed with costs.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record. Since, it has been fairly submitted on behalf of the learned advocate representing the respondent nos. 1 and 2 that the cancellation of the petitioner no.2's registration has not been effected and the adjudication of the notice of cancellation is yet not complete, I am of the view that the respondents, at this stage, should not give effect and/or further effect to the notice dated 18th January, 2023, and the purported website publication appearing at page 24 of the writ application without giving an opportunity of hearing to the petitioners. If any decision is taken by the respondent no.2, the same should be in accordance with the provisions set forth in

the said Act.

9. In view thereof, the respondents are restrained from giving effect and/or further effect to the notice dated 18th January, 2023, forming annexure P-6 to the present writ application and the website publication appearing at page 24 of the writ application without deciding the notice dated 21st June, 2022, in Form-E and without giving an opportunity of hearing to the petitioners.
10. Since it has been fairly contended by the learned advocate representing the respondent nos. 1 and 2 that the petitioner no.2's registration has not been cancelled, I am of the view that the respondents should permit the petitioners to upload further documents including the current annual returns if any, to rectify their shortcomings, if any.
11. Since nothing survives in the aforesaid application, let the same be disposed of without any order as to costs.
12. Since I have not called for any affidavits, allegations made in the writ petition are deemed to have been denied by the respondents.
13. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)