

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 29125 of 2022

**Debabrata Dey & Anr.
Vs.
The State of West Bengal & Ors.**

For the petitioners : Mr. R. Guha Thakurta
Ms. Senjuti Sengupta
Ms. Dona Ghosh
Ms. Dipa Roy

For the State : Mr. Susovan Sengupta
Mr. Subir Pal

For the respondent no.3 : Mr. Ranjay De
Mr. Basabjit Banerjee

Heard on : 03.04.2023

Judgment on : 03.04.2023

Raja Basu Chowdhury, J:

1. The present application has been filed, inter alia, challenging withdrawal/cancellation of the Certificate of Registration issued by the respondent no.2, in Form F.

2. The petitioner no.2 claims to be a duly registered trade union, under the Trade Unions Act, 1926 (hereinafter referred to as the said Act). A Certificate of Registration of the trade union, appearing at page 13 of the writ application, appears to have been issued by the respondent no.2. The petitioner no.2, to espouse the cause of the workmen employed with the respondent no.3, is presently party to several proceedings, inter alia, including proceedings pending before this Hon'ble Court.
3. It is the case of the petitioners that sometimes in the middle of September, 2022, the petitioner no.2 was served with a notice in Form E, issued under Regulation 8 of the Bengal Trade Unions Regulations, 1927 (hereinafter referred to as the said Regulation), notifying the intention of the respondent no.2 to proceed on 12th October, 2022, as regards the withdrawal or cancellation of Certificate of Registration of the petitioners' trade union, on the ground of non-submission of annual returns for more than three years and for non-compliance with Section 9A of the said Act, as amended. It is also the petitioners' case that the petitioners had since, met with the respondent no.2 and had thereafter served on the said respondent the annual returns, for the years 2013 to 2021. Such returns were forwarded in Form H as is required to be submitted as per the provisions of Section 28 of the said Act, read with Regulation 18 of the said Regulation. In support of the

aforesaid contention, Form H along with Postal receipt has been annexed with the writ application.

4. Subsequently, the petitioners came to learn from the respondent no.3, that a notice in Form F dated 7th November, 2022 has been issued in terms of Regulation 9 of the said Regulation, thereby withdrawing or cancelling the Certificate of Registration of the petitioner no.2. Immediately upon ascertaining the factum of issuance of the notice in Form F, dated 7th November, 2022, the petitioners through their advocate had called upon the respondent no.2 to withdraw the said Form F, as the grounds for withdrawal of the Certificate of Registration no longer subsisted, in the light of the petitioner no.2 complying with the request of the respondent no. 2, as made in Form E. Challenging the notice/order in Form F by the respondent no.2, the present writ application has been filed.

5. Mr. Guha Thakurta, learned advocate representing the petitioners submits that the petitioners, immediately upon issuance of the notice in Form E, had taken steps to comply with their shortcomings. All such documents as were required by the respondent no.2, had been duly submitted by the petitioners in requisite format. Once the aforesaid documents were submitted the petitioners were under a bona fide belief that no further steps would be taken by the respondent no.2. Unfortunately, the

notice/order in Form F has been issued. Interestingly, however, no copy of such notice has till date been served on the petitioners for which the petitioners could not take steps in the matter. He says that the respondent no.2 acted mechanically without any application of mind and without even considering the compliance of notice in Form H. By issuing Form F, the respondent no.2 has purported to cancel the Certificate of Registration of the petitioner no.2. The aforesaid cancellation has far reaching consequences. Presently there are several legal proceedings which are pending before different forum, unless the order of cancellation is set aside, and appropriate protection is granted, the petitioners shall suffer irreparable loss and injury and prejudice.

6. *Per contra* Mr. Pal, learned advocate representing the respondent nos. 1 and 2 submits that the petitioner no.2 was duly notified with regard to the failure on the part of the petitioner no.2 and was also called upon to comply with the statutory provisions. He says that the petitioner no.2 was under an obligation to file its returns. The petitioner no.2 having failed to file its returns, as is statutorily required under Section 28 of the said Act, a notice in Form E was issued. It is only thereafter that the notice in Form F has been issued. In any event, he submits that the issues raised by the petitioners can well be adjudicated by the Appellate Authority. He says that the statute provides for remedy in form of an appeal. Consequent upon the amendment of Section 11 of the

said Act, Section 11(1)(aa) has been inserted so as to confer jurisdiction on the concerned Labour Court/ Industrial Tribunal, where the head office of the trade union is situated in an area falling within the jurisdiction of the Labour Court/Industrial Tribunal. He says that by notification dated 3rd March, 2006, the Governor has been pleased to appoint the Labour Court/Tribunal mentioned in column 1 of the schedule to the said notification, for the districts mentioned in column 2 thereof, to be the Appellate Authority in respect of the appeals contemplated under Section 11(1) (aa) of the said Act. In the factual backdrop as aforesaid, it is submitted that this Hon'ble Court ought not to exercise jurisdiction and should dismiss the writ application, for the petitioner to avail appropriate remedy.

7. Mr. Dey learned advocate representing the respondent no.3 with his learned junior, enters appearance in the matter.
8. Heard the learned advocates appearing for the respective parties and considered the materials on record. I find in this case the petitioner no.2 had been granted registration by the respondent no.2, way back in the year 1994 and a Certificate of Registration to that effect had also been issued. From the statements made in the writ application it would be apparent that the petitioner no.2 to espouse the cause of the workmen, from time to time has taken various initiatives and at present there are several proceedings

pending, *inter alia*, including a writ application before this Court. Records would reveal that on the ground of failure on the part of the petitioner no.2 to comply with its statutory obligation of filing returns, a notice in Form E had been issued by the respondent no.2. The said notice, *inter alia*, notifies the petitioner no.2, the intention of the Registrar to proceed on the 12th October, 2022 to withdraw or cancel the Certificate of Registration of the trade union on the grounds mentioned therein. The grounds identified in the said notice are set out hereinbelow:

“Grounds:

1. Non-submission of Annual Returns for more than 3 years.

2. Non-compliance with section 9A of the Trade Unions Act, 1926.”

9. The petitioners claim that the petitioners had in pursuance of the aforesaid notice submitted annual returns for the years 2013 to 2021. The records further reveal that the respondent no.2 had purported to issue withdrawal or cancellation of the Certificate of Registration on 7th November, 2022. The petitioners have stated on oath that no copy of the aforesaid notice though marked to the petitioners, on the copy of the notice/order, had been served on the petitioners. Mr. Pal, learned advocate representing the

respondent nos. 1 and 2 also could not demonstrate that the aforesaid notice had, in fact, been served on the petitioner no.2. Interestingly, cancellation has been effected on 7th November, 2022, although the notice of cancellation recorded that the Registrar shall proceed to cancel the Certificate on 12th October, 2022. No prior notice of purported action to be initiated by the respondent no.2 on 7th November, 2022 appears to have been issued. Records do not reveal any opportunity of hearing was given to the petitioner no.2 on 7th November, 2022. The notice/order of cancellation is cryptic, no reasons have been provided for in the notice/order. Although the Registrar had issued the withdrawal or cancellation of the Certificate of Registration in statutory form F, the same does not absolve the Registrar to provide for reasons. Apart from the irregularity noticed above, the petitioners complain of violation of principles of natural justice as well.

10. Ordinarily, taking note of the submissions made by Mr. Pal, I would have directed the petitioners to file an appeal before the competent Court having jurisdiction. However, taking into consideration the fact that the notice/order passed by the Registrar is a non speaking order, the remedy of appeal in my view cannot stand as a bar. In absence of reasons, it is also extremely difficult for the appellate authority to probe into the mental process of the respondent no. 2 and to ascertain the

reasons for issuance of the notice/order of cancellation or withdrawal as aforesaid. There has been violation of principles of natural justice as well and the petitioner no.2, has also not been served with a copy of the order issued in Form F till date. The exercise of authority/ jurisdiction by the respondent no.2, in purporting to cancel the petitioners' Certificate of Registration, by notice dated 7th November, 2022 appears to be an irregular exercise of authority. Firstly, he did not take into consideration the returns filed by the petitioners in requisite Form H. Secondly, he did not conclude the proceedings on 12th October, 2022. On the contrary, the order of cancellation appears to be on 7th November, 2022, for which no prior notice was given to the petitioner no.2. The aforesaid notice/order passed by the respondent no.2 thus stands vitiated on the ground of violation of principles of natural justice as well. In absence of reasons the remedy of appeal also becomes otiose. Alternative remedy as argued by Mr. Pal, cannot stand in the way of this Hon'ble Court in exercise of its jurisdiction.

11. In view thereof, the order dated 7th November, 2022 passed by the respondent no.2, in Form F cannot be sustained and the same is accordingly set aside and quashed.

12. The respondent no.2 is directed to take into consideration the returns filed by the petitioners in Form H, and upon giving an

opportunity of hearing to the petitioners, to take a decision in the matter. Such decision must be taken in accordance with Section 10 of the said Act and be communicated to the petitioners.

13. With the aforesaid observations and directions, the writ application, being WPA 29125 of 2022 is disposed of.

14. There shall be no order as to cost.

15. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

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