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CMA.No. 1066 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2023

CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

C.M.A.No. 1066 of 2020

and

CMP.Nos. 6743 of 2020, 6851 of 2020 and 7929 of 2023

Indian National Government
Transport Workers
Federation (INTUC)
Represented by its General Secretary
T.Wilson

...Appellant

Versus

1. The Deputy Labour Commissioner No.I
Labour Commissioner Office
Teynampet, Chennai-600 018.

2. The Managing Director
Metropolitan Transport Corporation
Pallavan Salai, Chennai - 600 104.

Respondents

Civil Miscellaneous Appeal filed under Section 11 of the Trade Union Act, 1926, to set aside the impugned order in O.Mu.Aa.3/4049/17, dated 22.08.2017 passed by the 1st respondent.



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For Appellant

:

Mr.C.Kanagaraj

For R1

:

Mr.C. Jayaprakash

For R2

:

Mr.C. Gauthamaraj

JUDGMENT

This Civil Miscellaneous Appeal is filed seeking to set aside the order in O.Mu.Aa.3/4049/2017, dated 22.08.2017 passed by the first respondent/Deputy Labour Commissioner.

2. The appellant/Federation's registration under Trade Union Act, was cancelled by proceedings, dated 05.03.2015. A writ petition in W.P.No. 30210 of 2019 was filed by the appellant challenging the said order and the writ petition was disposed of on 01.11.2019 on the ground that the order was an appealable order under Section 11 of the Trade Union Act, 1926. The appellant therefore filed the appeal in the prescribed form before the Competent Court which was dismissed by the impugned order in the appeal.



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3. The learned counsel for the respondents submits that the office duly communicated the cancellation of the Registration but the said cancellation order was not challenged.

4. The learned counsel for the appellant/Federation on the other hand submits that that the cancellation order was not communicated to the appellant and therefore, the appellant could not challenge the same. At the time of hearing the appeal this Court directed the respondents to serve the copy of the cancellation order dated 05.03.2015 to the appellant and subsequently, the appellant amended the prayer challenging the cancellation order also.

5. The learned counsel for the appellant/Federation submits that cancellation order deserves to be set aside as there was gross violation of the principles of natural justice because no show cause notice was issued before cancellation. The learned counsel for the appellant referred to Section 10 (b) of the Act, and stated that non-filing of E>Returns is not a ground for cancelling the Registration. The learned counsel further



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submits that even otherwise before the cancellation order was passed, an opportunity of hearing ought to have been given to the appellant to explain his case.

6. The learned counsel for the respondents on the other hand submits that the cancellation order was passed as the appellant failed to file E>Returns and even the communication sent to the appellant to explain the non-filing of E>Returns, was returned stating that the said Federation was not functioning, which is a violation of the provisions of the Trade Unions Act. The counsel further submits that if the address of the INTUC was changed, the same was to be informed to the Registrar concerned within a period of 14 days, but the same was not done in this case. On the aforesaid grounds the learned counsel justified the cancellation order.

7. Heard both sides and perused the materials placed on record.

8. Though the impugned order refers to a communication calling for explanation under Section 10(b) of the Trade Union Act, for non-filing of E>Returns, no date is mentioned in the said communication. The burden is



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on the respondents to show that the communication was sent to the appellant before cancellation of Registration. The learned counsel for the appellant further submits that even the impugned order dated 05.03.2015 was given to the appellant only on the directions of this Court and thereafter the same came to be challenged.

9. The learned counsel for the appellant submits that the cancellation order may be set aside and the appellant may be permitted to make a representation with the respondents to accept his E>Returns.

10. In view of the fact that no opportunity was given to the appellant before passing the cancellation order, dated 05.03.2015, which is mandatory under Section 10(b) of the Trade Union Act. I am of the view that the impugned order cannot be sustained and the impugned order in O.Mu.Aa.3/4049/2017, dated 22.08.2017 is hereby set aside. The appellant is permitted to make a representation to the respondents to receive the E>Returns. On receipt of the representation, the respondents are directed to consider the same within a period of six weeks from the date of receipt of the representation. The respondents are directed to issue



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fresh notice to the appellant calling for his explanation and thereafter, pass appropriate orders on merits, in accordance with law.

11. Accordingly, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

24.04.2023

Index : Yes / No

Speaking Order : Yes/ No

Neutral Citation : Yes/No

msm

To

1. The Deputy Labour Commissioner No.I
Labour Commissioner Office
Teynampet, Chennai-600 018.
2. The Managing Director
Metropolitan Transport Corporation
Pallavan Salai, Chennai - 600 104.
3. The Section Officer, V.R. Section,
High Court of Madras, Chennai-600 104.



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N. MALA, J

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