

(2019) 08 CHH CK 0213

Chhattisgarh High Court

Case No: Writ Petition (L) No. 2940 Of 2007

Chhattisgarh Rajya Vidyut
Karmachari Janta Union

APPELLANT

Vs

Registrar, Trade Union, State Of
Chhattisgarh And Ors

RESPONDENT

Date of Decision: Aug. 30, 2019

Acts Referred:

- Indian Trade Unions Act 1926 - Section 10(B), 11, 28. 28(2)
- Constitution Of India, 1950 - Article 227

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: K.A. Ansari, Meera Answari

Final Decision: Dismissed

Judgement

Ram Prasanna Sharma, J

1. This writ petition is preferred under Article 227 of the Constitution of India for issuance of appropriate order to quash the impugned orders of respondents No. 1 and 2 (Annexure A/10 and A/18) by which registration of petitioner union is cancelled and cancellation order is affirmed.

2. The facts, in brief, are that the petitioner union is a Union registered under the Indian Trade Unions Act 1926 (for short, "the Act, 1926") which represented the majority of the employees of the Madhya Pradesh Electricity Board. The union being successor of Madhya Pradesh State Vidyut

Karmachari Janta Union continued to represent the majority of its employees and played pivotal role for just demands of the employees. Respondent

No.1 issued a notice to petitioner to explain within a period of two months as to why registration of the petitioner union should not be cancelled. Two such notices were issued on the same date under the instance of the expelled officer bearers/members of the union. Though period of two months was granted to the petitioner to give reply to the show cause notice issued under Section 10(B) of the Act, 1926, the respondent No.1 cancelled registration of the petitioner union before two months i.e., on 20-2-2007. The order of the respondent No.1 was challenged by filing an appeal under Section 11 of the Act, 1926 on 20-2-2007 in which application for stay of the operation of the order was also filed and it is submitted that petitioner union had already fixed the date for general meeting of the petitioner union at Korba on 24-2-2007 and 25-2-2007 in which elections were also to be held. The office bearers who have been expelled from union illegally were allowed to be intervened in the appeal before the respondent No.2 and the appeal was dismissed on 26-4-2007. The certificate of registration was issued by respondent No.1 on 17-5-2001. On 27-11-2006 Executive Committee of the petitioner union took a decision that there should be election on State, Divisional and other level of union. A programme was formulated in this regard. As per election programme, conference of the petitioner union was fixed for 24 and 25th February 2007 at Korba in which elections were also to be held. Respondent No.1 issued notice under Section 10(b) of the Act in which it is stated that the election of the petitioner union has not been held as prescribed under the law, therefore, there has been violation of Section 28(2) of the Act. In other notice of the same date with reference to the provisions of Section 28 of the Act, it was stated that certain return etc., has not been submitted to respondent No.1 from 2002-2003 and directed the petitioner union to file its reply as to why registration of the petitioner union should not be cancelled. Before expiry of two months, registration of the petitioner union was cancelled on 20-2-2007.

3. Learned counsel for the petitioner would submit that the cancellation of registration of the petitioner union is contrary to Section 10(B) of the Act, 1926 because instead of waiting for two months for filing of the reply, the order is passed within a month cancelling registration. The order passed by

respondent No.1 is clear in violation of not only of mandatory provisions in the proviso to Section 10(B) of the Act, 1926 but it is also mala fide

because two persons who have been expelled from the petitioner union namely Shri Ashok Pathak and M.P.Sao were allowed to intervene in the

appeal on 12-3-2007. He placed reliance in the matter of Neyveli National Workers Union (Registration No. 286/SAT) represented by its General

Secretary vs. Additional Registrar II of Trade Union and Deputy Commissioner of Labour II D.M.S. Compound, Chennai-6, reported in (1999) 1 LLJ

308 Madras.

4. I have heard learned counsel for the petitioner and perused the record in which orders have been passed.

5. Now the point for consideration is whether the order of cancellation of the petitioner union passed by respondent No.1 is liable to be quashed.

6. Two notices were issued to petitioner union on 23-1-2007 as per Annexure P/8 & P/9. In first notice the petitioner/union was required to answer

whether election was held after 5-11-2003. By second notice the union is required to submit annual statement for the period 1-1-2004 to 31-12-2006.

The record of respondent No.1 was produced before respondent No.2 and as per record, prior to these two notices on 6-11-2003 a notice was issued

to petitioner union to appear on 15-12-2003 and submit incumbent expenditure and statement, but it was never submitted. Again, notice was issued on

26-2-2004 and on 28-2-2004 when a statement was filed the petitioner union was asked to produce cash book, subsequent receipt and membership

register, but these documents were never produced for verification and inspection. Again, on 7-10-2004 notice was issued for submitting E-Form for

elected members, if any, for the period 2004-2006, but the same was never submitted which shows that no elections were held for the period 2004-

2006, therefore, trade union ceased to exist and it cannot function.

7. The second point for consideration of this court is whether Union which ceased to exist can file a petition before this court. C.K. Khande has filed

this petition as Ex-President and present General Secretary. When election is not held for the period 2004- 2006, the tenure of C.K. Khande expired in

the year 2004 and he cannot function as office bearer of the union and he cannot file this petition on behalf of the union. When no elected union is

functioning no executable order can be passed by this court for registration of union which is not in existence. It is not the case that notice for submission of election was issued for the first time on 23- 1-2007. Notice was also issued on 7-10-2004 for submission of list of elected members for the period 2004 - 2006 which was not answered. The only relevant document in the present case is submission of return regarding election for the year 2004-2006. The other documents subsequent to that period are not relevant for deciding the issues between the parties. Therefore, argument advanced on behalf of the petitioner that registration is cancelled before two months of notice, is not acceptable. The proceeding of respondent No.1 should be considered as a whole and when no reply was filed against the notice dated 7-10-2004 the argument advanced on behalf of the petitioner is not sustainable. The case law cited by learned counsel for the petitioner is clearly distinguishable from the and circumstances of the present case. No relief can be granted to the union which is not in existence.

8. Accordingly, the writ petition is liable to be and is hereby dismissed.