

**(2013) 10 AP CK 0065**

**Andhra Pradesh High Court**

**Case No:** Writ Petition No. 18199 of 2013

MRF Mazdoor Sangh

APPELLANT

Vs

The Commissioner of Labour  
and four Others

RESPONDENT

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**Date of Decision:** Oct. 3, 2013

**Citation:** (2014) 2 ALD 573 : (2014) 3 ALT 265 : (2014) 1 LLJ 149 : (2014) 1 LLN 322

**Hon'ble Judges:** Ramesh Ranganathan, J

**Bench:** Single Bench

**Advocate:** K.S. Murthy, for the Appellant; M. Radha Krishna Murthy, for the Respondent

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

Ramesh Ranganathan, J.

The action of the Deputy Registrar of Trade Unions and Deputy Commissioner of Labour, Sangareddy (hereinafter called the "Registrar"), in cancelling the registration certificate of the petitioner-trade union vide proceedings dated 13.06.2013, is under challenge in this Writ Petition as being arbitrary, illegal, and in violation of the provisions of the Trade Unions Act, 1926 (for brevity, "the Act"). A consequential direction is sought to the third respondent to conduct an enquiry as per law after giving the petitioner-union an opportunity of being heard. The petitioner Union submitted an application dated 02.10.2012, for registration of their Trade Union, under Regulation 3 of the A.P. Trade Unions Regulations, 1927. The said application was received by the office of the Registrar on 16.10.2012. The Registrar issued a Certificate of Registration of the Trade Union, in Form-C in terms of the Regulation 5(1), bearing No. A/T.U/99/2012 dated 18.10.2012. Soon thereafter, on 25.10.2012 and 26.10.2012, 88 workers of the 4th respondent submitted individual letters informing the 3rd respondent that they were not the members of the Union, their I.D. Cards and other documents were obtained without their knowledge and were used for the purpose of registration of the Trade Union. The

4th respondent submitted a representation on 29.10.2012 informing the 3rd respondent that over 60 workers, whose names were found in the resolution alleged to have been passed by the petitioner Union, had submitted representations to the Management that they had no knowledge of the registration of the Union by the so called office bearers; a fraud was played on them by persons claiming to be union office bearers, while submitting papers for registration to the office of the Registrar, which needed urgent enquiry to ascertain the real facts; and a proper enquiry should be made regarding membership of the petitioner Union, and their registration cancelled. The 4th respondent requested that registration of the petitioner Union be kept under suspension pending disposal of the enquiry, as they foresaw the possibility of clashes between the petitioner union and the other faction of workers which would cause unrest and disturbance in the factory. Enclosed to the said letter of the 4th respondent were copies of the representations of 88 workmen.

2. On receipt of the said representation, the Registrar issued notice dated 15.11.2012 informing the petitioner that 88 individual workers had represented that their signatures were misrepresented/forged and some of them were forced to join the union; and notice was being given to them as he intended to proceed, on or after 60 days of service of the notice, to cancel the certificate of registration, for the reasons given therein, unless sufficient cause was shown to the contrary in the meantime. The notice refers to Section 9A of the Act and states that the petitioner had failed to show that it had 10% of the workmen employed in the 4th respondent, with which it is connected, as its members after 18.10.2012 as per the amended provisions of the Act. A copy of the said notice was served on the petitioner on 16.11.2012.

3. The petitioner submitted their reply on 10.01.2013 informing the Registrar that the contents of the notice dated 15.11.2012 were self-contradictory; on the one hand, it was stated therein that the signatures were forged, they had misrepresented facts and were forcing some members to join the union; on the other hand, it was stated that the Union had violated Section 9A of the Act i.e., it lacked 10% membership; the notice revealed that the 4th respondent had submitted a letter dated 29.10.2012; on perusal of the copies of the letters, alleged to have been submitted by the individual workers, it was clear that the 4th respondent had created the said letters either by forging their signatures or by misrepresentation or after obtaining signatures from the individuals under threat of removal from employment; it appeared that the individual workmen did not submit any representation to the 3rd respondent directly; their Union was registered after following the procedure prescribed under the Act and Regulations; there was no misrepresentation of facts or forgery of the signature of any employee; they never forced any member to join their Union; their Union had the 10% strength as required under the Act; after registration of the union, the 4th respondent bore a grudge against them, and was trying to suppress Union activities which amounted to unfair labour practice; without conducting a fact finding enquiry, with regards the

contents of the letters alleged to have been submitted by the workmen and without there being any prima-facie evidence, the 3rd respondent had issued the notice at the instance of the 4th respondent; all 126 workers of the 4th respondent had attended the general body meeting dated 02.10.2012, and had signed in the minutes, which was verified by the Registrar affixing his signature on the minutes book; out of the 126 employees, who had signed in the minutes on 02.10.2012, 104 employees had also submitted individual affidavits stating that they had participated in the general body meeting dated 02.10.2012, they continued to be members of the union, the management of the 4th respondent had obtained their signatures on blank papers informing them that they proposed to grant house sites acquiring land for which purpose representations were required and thereafter the management of the 4th respondent had misused the said blank papers, and had created representations with false and baseless allegations; the originals of all 104 affidavits were enclosed along with the reply; the contents of the said affidavits disclosed the mischievous action of the 4th respondent in creating the alleged letters; the management of the 4th respondent was threatening workers not to join the union, they were making all efforts to cancel registration of the petitioner union which amounted to unfair labour practice; after formation of the union, about 319 workers had obtained membership as on date by duly submitting their respective applications to the union for membership; copies of the 319 application forms submitted by individual workers, copies of the subscription receipts, copies of the register of members and subscriptions in Form F were being enclosed along with their reply; they had lodged a complaint on 26.10.2012 with the 3rd respondent, the Superintendent of Police, Medak and the District Collector, Medak, but no action was taken on their complaint; their union was having 10% of the total strength as required u/s 9A of the Act from the date of registration till date; the 4th respondent, in collusion with the existing union, was creating unrest among the workers, and was trying to cancel registration of their union; and it is in the said course of action that the management of the 4th respondent had submitted a letter dated 29.10.2012 seeking cancellation of their Union. The petitioner Union requested the 3rd respondent to withdraw the notice dated 15.11.2012. Enclosed to the said letter dated 10.01.2013 were (1) 104 original affidavits; (2) the original membership application forms (319 nos.); (3) Membership Books - 2; (4) Subscription receipt books - 4; (5) photostat copy of their letter dated 26.10.2012; and (6) minutes of the meeting dated 02.10.2012. Thereafter by letter dated 23.02.2012, while requesting that appropriate steps be taken at the earliest, the petitioner informed the 3rd respondent that, in continuation of their reply dated 10.01.2013, their members were ready to appear before him for personal verification at his office to prove the requisite membership of their Union.

4. The impugned order of the Registrar dated 13.06.2013, whereby the certificate of registration of the petitioner Union was cancelled, records that a notice was issued to the petitioner Union giving them an opportunity to defend their case; an enquiry

was conducted by him, the Assistant Commissioner of Labour and the Assistant Labour Officer, on 22.05.2013 and 12.06.2013 to verify whether they had the minimum required 100 members; the Assistant Commissioner of Labour, Sanga Reddy had recorded the statements of the workmen to verify the veracity of the allegation made by the management; he had personally interrogated and interacted with as many as 46 workers whose names were shown as members of the Union; and, on his enquiry, 35 workers had reported that they were not interested in the formation of the Union, and had expressed their intention to withdraw therefrom. After extracting Section 4(1) of the Act and the first proviso thereto, the Registrar held that, in the light of the aforesaid observations, he was of the opinion that the minimum necessary requisite number to form the Union had fallen from 100 to 81 and, accordingly, registration of the petitioner Union was liable to be cancelled. He recorded his satisfaction u/s 10(b) of the Act and declared that the registration of the petitioner Union stood cancelled.

5. It is the petitioner's case that there is one more registered trade union in the fourth respondent company and, as it is not representing the grievances of the workmen effectively, the workmen had organized and formed themselves into the petitioner-union; it was only after satisfying himself, that all the requirements were satisfied, did the Registrar register the petitioner-union; the fourth respondent had resorted to illegal acts to get the registration certificate of the petitioner cancelled; they started threatening the workmen to discontinue their membership in the petitioner-union; on threat of termination of employment, and by mis-representation, the fourth respondent obtained their signatures on blank papers; the fourth respondent submitted a representation falsely alleging that the signatures of the workmen were used by the petitioner-union for the formation of the union; the workmen were also threatened and forced to initiate steps for cancellation of the registration of the petitioner-union; the petitioner's representation dated 26.10.2012, complaining of the illegal acts of the fourth respondent in resorting to unfair labour practices, was not acted upon; without causing any enquiry, as to the genuineness of the allegations made by the fourth respondent in their letter dated 29.10.2012, and relying on the alleged letters said to have been submitted by 88 individual workers and the representation submitted by the fourth respondent, the Registrar had issued notice dated 15.11.2012 to the petitioner-union for violation of Section 9A of the Act; the contents of the notice of the third respondent dated 15.11.2012 are self-contradictory; a detailed explanation dated 10.01.2013 was submitted to the petitioner reiterating the earlier stated facts; despite acknowledging receipt of the explanation dated 10.01.2013, the 3rd respondent neither afforded them an opportunity nor was any enquiry caused into the genuineness of the letters submitted by the fourth respondent; failure of the third respondent to conduct an enquiry, after giving the petitioner-union an opportunity of being heard and before passing any orders on the notice dated 15.11.2012, is arbitrary and illegal; the third respondent did not assign any reasons

for coming to the conclusion that Section 9A of the Act was violated; the petitioner submitted another representation dated 23.02.2013 stating that their members were ready to appear before him, for personal verification at his office, to prove the requisite membership of the union; in W.P. No. 5623 of 2013 filed by them an order of status quo was passed on 01.03.2013 for a period of four weeks; they intimated respondents 1 to 3 of the order passed by this Court by their letter dated 03.03.2013; the Joint Commissioner of Labour called the petitioner for a meeting in March, 2013, and expressed his readiness to cause a full-fledged enquiry at his office or at the office of the third respondent; their office bearers were asked to suggest the manner in which the meeting should be conducted; a few staff members of the Labour Department had later come to the factory premises of the 4th respondent; senior officers of the 4th respondent management were present in the office room of the Personal Manager when each worker was called in, grilled, heckled and threatened; the petitioner's protests were in vain; the fourth respondent-management has no locus standi, right or authority in the issue; it was only at the behest of the fourth respondent that respondent Nos. 1 to 3 resorted to the illegal act of conducting an enquiry in the factory premises; officials of the fourth respondent, in collusion with the official respondents, had acted detrimental to the interests of workers who were members of the petitioner union; the impugned proceedings dated 13.06.2013, cancelling their registration, was received on 17.06.2013; it is evident therefrom that the third respondent had caused an enquiry behind their back, and without giving them or their members an opportunity of being heard; the third respondent did not even consider their explanation dated 10.01.2013; his action, in cancelling the registration certificate, is arbitrary, illegal, in violation of principles of natural justice and contrary to the provisions of the Act and the Regulations made thereunder; the reasons given by the third respondent, in the impugned proceedings, are not only self-contradictory but also fall foul of Section 10 of the Act; as the impugned proceedings dated 13.06.2013 is arbitrary and illegal, and was passed without following the procedure laid down under the Act and the Regulations and in violation of principles of natural justice, existence of an alternate remedy of appeal u/s 11 of the Act is not a bar to maintain the Writ Petition; and the petitioner withdrew W.P. No. 5623 of 2013 as it had become infructuous.

6. In his counter affidavit, the third respondent would submit that the petitioner was registered on 18.10.2012 as per the provisions of the Act; he had registered the petitioner union after satisfying himself that their application was in order; no complaints were received from any quarter before registration on 18.10.2012; at the time of registration of the Union, the petitioner had shown its membership as 126 workers of the 4th respondent factory; subsequently 88 workers submitted representations dated 25.10.2012 and 26.10.2012 that their co-employees in the fourth respondent had taken them to Sangareddy for some meeting, and had obtained their signatures, copies of pay slips, ID cards etc., without informing them of the purpose, they came to know subsequently that their signatures were misused

for registration of the petitioner-Union and they had no connection with the petitioner Union; the 88 workmen requested the third respondent not to take into consideration their names/signatures, and to delete their names from the said Union, as they had nothing to do with the newly formed Union; the fourth respondent submitted representation dated 29.10.2012 enclosing thereto copies of the representations of 88 workmen requesting that an enquiry be conducted and registration of the petitioner's union be cancelled, as it was obtained by fraud; as the petitioner union had less than 10% membership of the workmen, employed in the 4th respondent, a notice was issued u/s 9A of the Act; after due enquiry it came to light that the petitioner-Union was registered with forged signatures, coercion, misrepresentation, without the consent of the workmen and by playing fraud; based on the representations dated 25.10.2012 and 26.10.2012 of the 88 workers, and the representation of the fourth respondent dated 29.10.2012, a notice dated 15.11.2012 was issued to the petitioner, u/s 10(b) of the Act, to show cause why their registration not be cancelled; subsequently 104 workers had submitted individual affidavits dated 26.11.2012 stating that they were continuing as members of the Union; it appeared as if the same workers had signed the representations dated 25.10.2012 and 26.10.2012, and also the affidavits dated 22.11.2012, without atleast a few of them knowing the facts; the petitioner union's letter dated 26.10.2012 could not be believed as the workers had given representation dated 25.10.2012 and 26.10.2012 in their own hand writing; none of the workers had complained to the 3rd respondent in person either on 26.10.2012 or subsequently, except for a few office bearers of the petitioner union; hence action could not be taken by the 3rd respondent on the petitioner union's representation dated 26.10.2012; on receipt of 88 individual representations of the workers dated 15.10.2012 and 26.10.2012, and the representation of the 4th respondent dated 29.10.2012, the 3rd respondent had issued notice dated 15.11.2012 to the petitioner union to ascertain facts, and to verify whether the petitioner union had the required members as per Section 9A of the Act; the petitioner's contention that the 4th respondent had created the said letters of the workmen, by forging and misrepresenting facts, could not be believed in the light of the subsequent enquiry conducted by the Assistant Commissioner of Labour, Sangareddy on 22.05.2013 and 12.06.2013 with the workmen; on perusal of their statements, it was evident that 35 workers had stated that they were not interested in the formation of the petitioner union, their pay slips, their signatures, were obtained for the purposes of a loan, their signatures were either forged or obtained forcefully etc; 11 workers had stated that they were in favour of the petitioner union; the contents of the workers affidavits dated 26.11.2012 could not be believed as their statements, given to the 3rd respondent, was much later in May/June, 2013; the petitioner's allegation that the 4th respondent took the signatures of workers on blank papers, threatened them etc., could not be believed, as none of the 46 workmen interrogated on 22.05.2013 and 12.06.2013 including those 11 workers, who gave statements in favour of forming the petitioner union, levelled any such allegations against the 4th respondent; the Assistant

Commissioner of Labour visited the 4th respondent's premises for conducting an enquiry; he gave a list of 88 workers at the time office of the 4th respondent requesting that the workers be sent one by one so that they may not be influenced either by the petitioner or by the management; during the course of enquiry, 35 workers gave their statements to the effect that their signatures were forged/taken for some other purpose, but not as contended by the petitioner union; it could be seen that, at the time of registration of the trade union, the petitioner union had resorted to malpractices; registration of the petitioner union was, therefore, liable to be cancelled; in view of the statements of 35 workers, the petitioner union did not have the required strength of 100 workers on the date of registration on 18.10.2012 or afterwards; their present membership of 319 workers is of no help; it is incorrect to state that the 3rd respondent neither considered their explanation dated 10.01.2013 or the 104 affidavits nor did he give them an opportunity by conducting an enquiry; an enquiry was conducted and 46 workers were examined on 22.05.2013 and 12.06.2013; all these matters were considered before the cancellation order dated 13.06.2013 was passed; inspite of being given an opportunity, the petitioner had failed to produce any workers before the 3rd respondent to support their contention; on the instructions of the 1st and 2nd respondent, an enquiry was caused into the representations of the petitioner, the 4th respondent, and the letters of the workmen dated 25.10.2012 and 26.10.2012, in the 4th respondent's premises; individual workmen were called and their statements recorded; the allegation that subordinate officials had obtained the signatures of the workmen on blank papers is not true as their signatures were obtained during the enquiry, after recording their statements; considering the representations and affidavits of these individuals, the petitioner-Union's representations, the representation of the fourth respondent, and the instructions of the first and second respondents, and based on the enquiry report dated 13.06.2013 submitted by the Assistant Commissioner of Labour, Sangareddy, the petitioner's registration was cancelled vide proceedings dated 13.06.2013 u/s 9A of the Act as they had 81 members only, whereas they were required to have 100 workers as their members; and the allegations, that cancellation of registration is arbitrary, illegal, unjustified and in violation of principles of natural justice, are not correct.

7. In the counter affidavit, filed on behalf of the 4th respondent, it is stated that there is no procedure prescribed, either under the Act or the Regulations, for the Registrar to cause an enquiry before cancellation of registration of a trade union, on an application made by any party for cancellation u/s 10 of the Act; all that is prescribed is for a notice, of not less than two months, to be given specifying the grounds on which it is proposed to withdraw or cancel the certificate of registration; the petitioner had sought registration under the Act obtaining signatures of 126 workers, of the 4th respondent company, misleading and misrepresenting them in a fraudulent manner; 88 of these workmen gave a complaint to the 3rd respondent,

marking a copy to the 4th respondent, to the effect that they neither took membership nor had they anything to do with the petitioner union and registration of the petitioner union was obtained by playing fraud on them.

8. The counter-affidavit of the 4th respondent, which contains a table of the names and particulars of these 88 individuals, further states that some of them had complained to the 3rd respondent that the signatures, shown in the minutes of general body meeting of the petitioner held on 02.10.2012, were not theirs; two workers Mr. S. Murali, and Mr. M. Balaji had addressed letters, both dated 07.12.2012, to the 3rd respondent that they did not attend the alleged general body meeting of the petitioner held on 02.10.2012 and were on duty on that date; in fact, Mr. Murali had reported for duty on 02.10.2012 in the first shift, and continued to remain on duty even in the second shift; the minutes of the meeting of the petitioner records that the meeting took place at 10.00 A.M. on 02.10.2012 and shows that Mr. Murali was present in that meeting, and had subscribed his signature; the minutes were fabricated and the signatures were forged, as Mr. Murali was present on duty from 7.00 A.M. to 11.00 PM on 02.10.2012; he could not have, therefore, attended the meeting of the petitioner union; similarly Mr. Balaji was on duty on 02.10.2012 in the first shift and, as such, could not have been present; the abstract of the muster roll of these two individuals were being placed on record to show that they were on duty on that day; it is clear that registration of the petitioner union was obtained by fraud; the 3rd respondent had issued notice to the petitioner indicating his intention to cancel registration of the Trade Union for the reason that the petitioner union had failed to show that it represented 10% of the workmen employed in the 4th respondent after 18.10.2012; the notice was issued as 88 workers had represented that their signatures were misrepresented, forged and some of them were forced to join the union; copies of the representation of the 88 workers were forwarded to the petitioner union; the petitioner had obtained registration by fraudulent means obtaining the signatures of workmen/employees under coercion and undue influence; the Assistant Commissioner of Labour had conducted an enquiry into the complaint given by the 4th respondent on 11.02.2013; the notice of the Assistant Commissioner of Labour stated that, during enquiry, statements of seven individual workers were recorded in respect of registration of the union, the said workers had informed that they had no knowledge of the union registration; the Assistant Commissioner of Labour was forced, by the President of the petitioner Union, to stop the enquiry on 11.02.2013; the 4th respondent lodged a complaint with the Commissioner of Labour regarding stoppage of the enquiry by the Assistant Commissioner of Labour, Sangareddy at the behest of the President of the petitioner union; the Deputy Commissioner of Labour again commenced enquiry on 22.05.2013 afresh; he recorded the statements of 25 of the 88 workers, 17 of whom gave their statements in favour of the management confirming the contents of the complaint of the 4th respondent. Copies of the statement of the 17 workers are filed.



9. The counter affidavit of the 4th respondent also states that, on 22.05.2013, both the Registrar and the Assistant Commissioner of Labour had abruptly stopped the enquiry on the instructions of the Joint Commissioner of Labour; and again on 12.06.2013, as per the instructions of the Joint Commissioner, the enquiry was continued wherein the Registrar recorded the statements of 21 workers 18 of whom confirmed the contents of the complaint of the 4th respondent. Copies of the statements, given by the 18 workers to the 3rd respondent, is enclosed along with the counter affidavit. The 4th respondent would further submit that the statements of 46 of the 88 workers were recorded; and, except for 11, all the other 35 workers denied being interested in the formation of the petitioner union; some of the workers, shown as members of the petitioner union, are also members of another union; if 35 of the 126 workers are considered not to be the members of the petitioner union, as per their statement, the strength of the petitioner union would come down to 91 members, which is less than the minimum requisite strength of 100 members as stipulated u/s 9A of the Act; registration of the petitioner is, therefore, liable to be cancelled; the 3rd respondent had cancelled registration after recording the workers statements, and after personally interrogating and interacting with them; no provision of the Act has been violated; in the absence of documentary evidence, merely filing affidavits or self-serving statements would not suffice; the 103 affidavits filed by the petitioner union, alleged to have been given by the workers of the 4th respondent, have no evidentiary value till all the 103 individual workers are examined on oath before this Court to elicit the truth; the very fact that there are three more Unions, registered under the Act, in their establishment would show that the 4th respondent is not averse to the formation of a Union by their workers, and their affiliation to any of the Unions; the 4th respondent, which believes in democracy and values its workmen, has been in existence at Sadasivapet since 1990, and has signed five long term settlements with its Union; the petitioner's contention of having membership of 319 workers of the 4th respondent is not tenable; the allegations that the 4th respondent has no locus standi, respondents 1 to 3 had resorted to illegal acts of conducting enquiry in the 4th respondent premises and had clouded with the officials of the 4th respondent, are not tenable; there are about 2500 workers working either directly or indirectly with them; and there has never been any complaint against them ever since inception.

10. Elaborate submissions, both oral and written, were made by Sri K.S. Murthy, Learned Counsel for the petitioner and Sri M. Radhakrishna Murthy, Learned Counsel for the 4th respondent. The Learned Government Pleader for Labour advanced arguments in justification of the order impugned in this Writ Petition, and has placed the original records for the perusal of this Court. It is convenient to examine the rival submissions under different heads.

I. FUNDAMENTAL RIGHTS MUST BE LIBERALLY INTERPRETED, AND THE RESTRICTIONS THEREON BE STRICTLY CONSTRUED:

11. Sri K.S. Murthy, Learned Counsel for the petitioner, would submit that the 4th respondent management cannot water down the fundamental right of the petitioner to form an association, with the help of willing officers and in violation of principles of natural justice; and the arbitrary exercise of power to cancel registration of the petitioner - Union is not only contrary to the provisions of the Act but also in violation of Article 19(1)(c) of the Constitution of India.

12. On the other hand, Sri M. Radhakrishna Murthy, Learned Counsel for the 4th respondent, would submit that, in the present case, the Registrar of Trade Unions issued notice dated 15.11.2012, and cancelled registration by order dated 13.06.2013; registration was cancelled, by the Registrar, nearly 6 months after the notice was issued, and 4 months after expiry of the mandatory period of 2 months from the date of the notice; the statutory requirement of Section 10(b) of the Act has been complied with on 2 months advance notice being given specifying the grounds on which he intended to cancel registration; the provisions of the Act do not envisage or prescribe issuance of a second notice, after conclusion of the enquiry, before cancellation of registration of the Trade Union; and the provisions of the Act are silent regarding the procedure to be followed by the Registrar of Trade Unions in conducting an enquiry on a complaint seeking cancellation of registration.

13. Rights and freedoms of citizens are set forth in the Constitution in order to guarantee that the individual and his personality shall be free from official interference except where a reasonable basis for intrusion exists. ( [Gobind Vs. State of Madhya Pradesh and Another](#), . The principle underlying the structure of the rights guaranteed by Article 19 is a balancing of the need for individual liberty with the need for social control in order that the freedoms guaranteed to the individual subserve the larger needs -- moral, social, economic and political -- of the community and thus ensure orderly progress towards the goal indicated by the preamble. ( [The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another](#), Article 19(1)(c) confers a right on all citizens to form associations or unions. Article 19(4) stipulates that nothing in clause (c) of Article 19(1) shall affect the operation of any existing law in so far as it imposes, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the clause. ( AIR 1958 78; [Raja Suryapalsingh and Others Vs. The U.P. Govt.](#), . The right to form associations or unions has wide and varied scope for its exercise, and its curtailment is fraught with potential reactions in the religious, political and economic fields. [State of Madras Vs. V.G. Row](#), ). While Article 19(1) grants rights to the citizens as such, associations or Unions can lay claim to the fundamental rights guaranteed by Article 19(1)(c) solely on the basis of their being an aggregation of citizens i.e. the rights of the citizens composing the body. [Dharam Dutt and Others Vs. Union of India \(UOI\) and Others](#), ; [All India Bank Employees" Association Vs. National Industrial Tribunal and Others](#), [State of Madras Vs. V.G. Row](#),

14. The right to form a Union can be effective only if it is held to include within it the right to continue the Union with its composition as voluntarily agreed upon by the persons forming it. [Smt. Damyanti Naranga Vs. The Union of India \(UOI\) and Others, Asom Rastrabhasa Prachar Samiti and Another Vs. State of Assam and Others](#) . The right to form unions is a positive right, which alone is made a fundamental right. [Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others](#), The qualification subject to which the right under sub-clause (c) is guaranteed, viz. the contents of clause (4) of Article 19, throw considerable light upon the scope of the freedom, for the significance and contents of the grants of the Constitution are best understood and read in the light of the restrictions imposed. [All India Bank Employees" Association Vs. National Industrial Tribunal and Others](#) . The right to form a Union is to be tested with reference to Article 19(1)(c) and the validity of the restrictions thereon by reference to Article 19(4). [Dharam Dutt and Others Vs. Union of India \(UOI\) and Others, All India Bank Employees" Association Vs. National Industrial Tribunal and Others](#),

15. The only restriction on a fundamental right is the authority of the State to make a law imposing reasonable restrictions under clauses (2) to (6) of Article 19. The expression "reasonable restrictions" signifies that the limitation imposed on a person in the enjoyment of that right should not be arbitrary or excessive. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation, which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness [Pathumma and Others Vs. State of Kerala and Others, Chintaman Rao Vs. The State of Madhya Pradesh](#) ; and [The State of Maharashtra Vs. Himmatbhai Narbheram Rao and Others](#) ). In imposing restrictions on the fundamental rights, the State must adopt an objective standard. The restrictions must be in public interest, must bear a close nexus with the object in the interest of which they are imposed, and a just balance should be struck between the deprivation of the right and the danger or evil sought to be avoided. [Laxmi Khandsari and Others Vs. State of U.P. and Others](#) ; [P.P. Enterprises and Others Vs. Union of India \(UOI\) and Others](#), Restrictions can by no means be said to be unreasonable, if it is only regulatory and not prohibitory. [P.P. Enterprises and Others Vs. Union of India \(UOI\) and Others](#),

16. While interpreting the provisions of the Constitution, more particularly the fundamental rights in Part III thereof, the Court should adopt a construction which would give full play to the fundamental rights, and must resort to a strict construction of the restrictions imposed under clauses (2) to (6) of Article 19. A constitution is a legal instrument giving rise, amongst others, to individual rights capable of enforcement in a court of law. Respect must be paid to the language used. It is quite consistent with this, to be guided by the principle of giving full recognition and effect to those fundamental rights and freedoms. (Minister of Home Affairs v. Fisher (1979) 3 All ER 21 ). In the context of the principles underlying the Constitution, and the manner in which Part III has been framed, the guarantees

embodied therein are to be interpreted liberally so as to subserve the purpose for which the Constitution-makers intended them, and not in any pedantic or narrow sense. [All India Bank Employees' Association Vs. National Industrial Tribunal and Others](#), The Court should not interpret constitutional rights, enshrined in Part III, to choke its life-breath or chill its elan vital by processes of legalism, overruling the enduring values burning in the bosoms of those who won our independence and drew up our founding document. True, high constitutional policy has harmonised individual freedoms with holistic community good by inscribing exceptions to Article 19(1) in Articles 19(2) to (6). Even so, what is fundamental is the freedom, not the exception. [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another, ; State of Madras Vs. V.G. Row](#), . Construing Section 10 of the Act, as conferring an unbridled discretion on the Registrar, to cancel the Certificate of Registration of a Union, on his subjective satisfaction and at his whim and fancy, would render it ultra vires Article 19(1)(c) of the Constitution of India as the restriction placed thereby, on the fundamental right to form a Union, would not be a reasonable restriction under Article 19(4) of the Constitution of India.

## II. CLAUSES (B) & (C) OF SECTION 10 OF THE ACT - ITS SCOPE:

17. Bearing this limitation in mind, let us now examine the scope of Section 10 of the Act and its proviso. Before doing so, it is necessary to briefly note the relevant provisions of the Act. Section 8 relates to registration and provides that the Registrar, on being satisfied that the Trade Union has complied with all the requirements of the Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration. Section 9, which relates to certificate of registration, stipulates that the Registrar, on registering a Trade Union u/s 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under the Act. In the case on hand, the petitioner Union was registered u/s 8 of the Act and a certificate of registration was issued in their favour by the Registrar, u/s 9 of the Act, on 18.10.2012.

18. Section 9A of the Act relates to the minimum requirement of membership of a Trade Union and, thereunder, a registered Trade Union of workmen shall at all times continue to have not less than ten per cent, or one hundred of the workmen, whichever is less, subject to a minimum of seven, engaged or employed in an establishment or industry with which it is connected, as its members. Section 10 of the Act relates to cancellation of registration and, thereunder, a certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar: (a) on the application of the Trade Union to be verified in such manner as may be prescribed; (b) if he is satisfied that the certificate has been obtained by fraud or mistake or that the Trade Union has ceased to exist or has willfully, and after notice from him, contravened any provision of the Act or allowed any rule to continue in

force which is inconsistent with any such provision or has rescinded any rule providing for any matter, provision for which is required by Section 6 of the Act; and (c) if he is satisfied that a registered Trade Union of workmen ceases to have the requisite number of members. Under the proviso thereto not less than two months previous notice in writing, specifying the ground on which it is proposed to withdraw or cancel the certificate, shall be given by the Registrar to the Trade Union before the certificate is withdrawn or cancelled otherwise than on the application of the Trade Union.

19. Upon a complaint being made, the Registrar has the power to cancel registration u/s 10 of the Act after making due inquiry. Two months previous notice, specifying the ground of proposed cancellation, must have been issued, [Tamil Nadu Government Press Workers Sangam Vs. First Trade Union Additional Registrar \(Deputy Commissioner of Labour I\)](#), Mysore Iron and Steel Workers, labourers' Association v. Commissioner of Labour and Registrar of Trade Unions, Bangalore 1972 LIC 799; and [Tata Electric Companies Officers Guild Vs. Registrar of Trade Unions](#), for him to exercise jurisdiction to cancel the registration of a Trade Union. (Association OF Engineering Workers v. Dockyard Labour Union : 1995 Suppl. (4) SCC 544). The power to cancel the registration is different and distinct from the inherent power to recall the order passed earlier. In cases where the Registrar finds that fraud was played, or an illegality was committed in the registration of a Union, he has also the power to recall his order [Fero Lite Highlight Kamgar Union Vs. Registrar and Others](#),

20. Regulation 6 of the Central Trade Union Regulations, 1938, and Regulation 8 of the A.P. Trade Union Regulations, 1927, require the Registrar, on receipt of an application for the cancellation of registration u/s 10(a) of the Act, to satisfy himself that the cancellation of registration was approved by a general meeting of the Trade Union or, if it was not so approved, that it has the approval of the majority of the members of the Trade Union. The said Regulations enable him to call for such further particulars as he may deem necessary and to examine any officer of the Union. Except to stipulate in Regulation 9 that a show cause notice should be served on the Union in Form-D, both the State and the Central Regulations are silent on the manner in which the power of cancellation of registration, under clause (b) and [c] of Section 10 of the Act, should be exercised by the Registrar.

21. Should Section 10 of the Act be so interpreted as conferring an unguided discretion on the Registrar to cancel registration of a Trade Union at his subjective satisfaction? It is a cardinal rule of construction that if on one construction being given the statute will be rendered ultra vires the powers of the legislature whereas on another construction which may be open, the statute remains effective and operative, then the court will prefer the latter, on the ground that the legislature is presumed not to have intended an excess of jurisdiction. [Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. and Others etc.](#), Shell Co. of Australia v.

Federal Commr. of Taxation 1931 AC 275 (Privy Council); [Kedar Nath Singh Vs. State of Bihar](#), [R.M.D. Chamarbaugwalla Vs. The Union of India \(UOI\)](#), ; [The State of Bihar and Others Vs. Charusila Dasi](#), ; In re, the AIR 1941 72 (Federal Court)

22. If the provisions of the statute are reasonably capable of a construction which does not involve the infringement of any fundamental rights, that construction must be preferred though it may reasonably be possible to adopt another construction which leads to the infringement of the said fundamental rights. [Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others](#), . A court of law would interpret a provision which would help in sustaining the validity of the law by applying the doctrine of "reasonable construction" than accepting the interpretation which may render such provision unsustainable and ultra vires the Constitution, [Olga Tellis and Others Vs. Bombay Municipal Corporation and Others](#), [Japani Sahoo Vs. Chandra Sekhar Mohanty](#), and [U.P. Power Corporation Ltd. Vs. Ayodhya Prasad Mishra and Another](#), , as the parliament is presumed to have enacted a reasonable statute. [Bharat Petroleum Corpn. Ltd. Vs. Maddula Ratnavalli and Others](#), Active Liberty: Interpreting our Democratic Constitution, Knoph (Chapter on Statutory Interpretation, page 99 for "Reasonable Legislator Presumption").

23. In the present case, this Court is not called upon to examine the scope of Section 10(a) of the Act. The first limb of Section 10(b) of the Act is attracted only in cases where the certificate of Registration has been obtained by fraud or mistake or the Trade Union has ceased to exist. As the words "mistake" and "fraud", used in Section 10(b), are not defined in the Act it is necessary to understand what these words mean, and the scope of the power conferred u/s 10(b) when information, containing allegations of fraud, is received by the Registrar.

a). "MISTAKE" AND "FRAUD": ITS MEANING:

24. Black's Law Dictionary (Ninth Edition) defines the word "mistake" as used to refer to an erroneous belief. A party's erroneous belief is, therefore, said to be a "mistake" of that party. The belief need not be an articulated one and a party may have a belief as to a fact when he merely makes an assumption with respect to it, without being aware of alternatives. The expression "fraud" means an act of deliberate deception with the design of securing something by taking unfair advantage of another, to gain by another's loss. [S.P. Chengalvaraya Naidu \(dead\) by L.Rs. Vs. Jagannath \(dead\) by L.Rs. and others](#), [The State of Andhra Pradesh and Another Vs. T. Suryachandra Rao](#), and [Behari Kunj Sahkari Avas Samiti Vs. State of U.P. and Others](#), "Fraud" is a false representation by one who is aware that it was untrue with an intention to mislead the other who may act upon it to his prejudice and to the advantage of the representer. It is defined in Oxford Dictionary as, "using of false representations to obtain an unjust advantage or to injure the rights or interests of another". In Webster it is defined as, "deception in order to gain by another's loss; craft; trickery; guile; any artifice or deception practiced to cheat, deceive, or circumvent another to his injury". [State of Maharashtra Vs. Dr. Budhikota](#)



[Subbarao](#), . In Black's Law Dictionary, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, is one which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to the Halsbury's Laws of England, a representation is deemed to be false and, therefore, a misrepresentation if it was, at the material date, false in substance and in fact. From the dictionary meaning or even otherwise fraud arises out of the deliberate active role of the representer about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of a fact with knowledge that it was false. "Fraud" is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless of whether it be true or false. A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud. [Ram Chandra Singh Vs. Savitri Devi and Others](#), ; [The State of Andhra Pradesh and Another Vs. T. Suryachandra Rao](#), and [Behari Kunj Sahkari Avas Samiti Vs. State of U.P. and Others](#),

25. Fraud is a conduct which induces the authority to take a definite determinative stand as a response to the conduct of the former. Although negligence is not fraud, yet it can be evidence of fraud. Misrepresentation itself amounts to fraud. Innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false. A representation is fraudulent not only when the person making it knows it to be false, but also when he ought to have known, or must be taken to have known, that it was false. A false statement which a person ought to have known was false, and which he must therefore be taken to have known was false, cannot be said to be honestly believed in. "A consideration of the grounds of belief" is, no doubt, an important aid in ascertaining whether the belief was really entertained. A man's mere assertion that he believed the statement he made to be true is not accepted as conclusive proof that he did so. ( [Ram Chandra Singh Vs. Savitri Devi and Others](#), ). Suppression of a material document would also amount to fraud. [Gowrishankar and Another Vs. Joshi Amba Shankar Family Trust and Others](#), ; [S.P. Chengalvaraya Naidu \(dead\) by L.Rs. Vs. Jagannath \(dead\) by L.Rs. and others](#), ; [The State of Andhra Pradesh and Another Vs. T. Suryachandra Rao](#), [Behari Kunj Sahkari Avas Samiti Vs. State of U.P. and Others](#), and [Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others](#), ). Material fact would mean material for the purpose of determination of the lis, the

logical corollary whereof would be whether the same was material for grant or denial of the relief. [S.J.S. Business Enterprises \(P\) Ltd. Vs. State of Bihar and Others](#), [Sardar Associates and Others Vs. Punjab and Sind Bank and Others](#), [The Divisional Forest Officer Vs. The District Judge and Others](#),

26. In Administrative Law it has been extended to failure to disclose all relevant and material facts which one has a positive duty to disclose. It is thus understood as a deliberate act or omission to mislead the other to gain undue advantage. "It consists of some deceitful practice or willful device resorted to with intent to deprive another of his right or in some manner to do him an injury" (Black's Law Dictionary). [State of Maharashtra Vs. Dr. Budhikota Subbarao](#), The colour of fraud in public law or administrative law arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to procure an order from an authority. In public law the duty is not to deceive. ( [Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers](#), ; [Roshan Deen Vs. Preeti Lal](#), [Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others](#), ; [Ram Chandra Singh Vs. Savitri Devi and Others](#), ; [Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another](#), [The State of Andhra Pradesh and Another Vs. T. Suryachandra Rao](#), [Behari Kunj Sahkari Avas Samiti Vs. State of U.P. and Others](#), and [The Divisional Forest Officer Vs. The District Judge and Others](#), There is, however, no fraud if what is honestly believed to be true turns out to be false. ( [Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers](#),

b). DEGREE OF PROOF REQUIRED TO ESTABLISH FRAUD IS OF A VERY HIGH ORDER:

27. Fraud can either be proved by established facts or an inference can be drawn from admitted and/or undisputed facts. ( [Andhra Pradesh Scheduled Tribes Employees Association Vs. Aditya Pratap Bhanj Dev and Others](#), The law requires strict proof of fraud [State of Maharashtra Vs. Dr. Budhikota Subbarao](#), [Mrs. Saradamani Kandappan Vs. Mrs. S. Rajalakshmi and Others](#), . Fraud is essentially a question of fact, the burden to prove which is upon him who alleges it. [Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers](#), . Mere allegations or averments of facts do not make a strong prima facie case of fraud. The material and evidence has to show it. A finding as to fraud cannot be based on suspicion and conjecture and must be established beyond reasonable doubt. ( [Svenska Handelsbanken Vs. M/s. Indian Charge Chrome and others](#), . Ordinarily, the burden to prove fraud would be on the party who asserts the affirmative of the issue and it rests, after evidence is gone into, upon the party against whom, at the time the question arises, judgment would be given if no further evidence were to be adduced by either side [Anil Rishi Vs. Gurbaksh Singh](#), . The degree of proof required in such cases is extremely high. An ambiguous statement cannot per se make the representer guilty of fraud. To prove a case of fraud, it must be proved that the representation made was false to the knowledge of the party making such representation or that the party could have no reasonable belief that it was true. [A.C. Ananthaswamy and Others Vs. Boraiah \(dead\) by LRs.](#), . Fraud must be established beyond reasonable doubt. However suspicious



may be the circumstances, however strange the coincidences, and however grave the doubt, suspicion alone can never take the place of proof. ( [Union of India \(UOI\) Vs. Chaturbhai M. Patel and Co.](#), AIR 1941 93 (Privy Council) ). The basic principles of the rules of evidence require a party alleging fraud to give particulars of the fraud. In the absence of any such particulars being mentioned in the notice, attributing some overt act, no inference can be drawn of fraud merely on the basis of presumptions. A heavy duty lies upon the party who alleges fraud to prove such allegations. The level of proof required for proving fraud is extremely high. [Sangramsinh P. Gaekwad and Others Vs. Shantadevi P. Gaekwad \(Dead\) thr. Lrs. and Others, Chief Engineer, M.S.E.B. and Another Vs. Suresh Raghunath Bhokare](#), Maharashtra Power Development Corpn. Ltd. v. Dabhol Power Co. (2005) 11 SCC 209 ; and [Alva Aluminium Ltd., Bangkok Vs. Gabriel India Limited](#),

c). THE VALIDITY OF A STATUTORY ORDER MUST BE JUDGED ON REASONS GIVEN THEREIN AND NOT ON THE EXPLANATION FURNISHED SUBSEQUENTLY:

28. The condition precedent, for the exercise of jurisdiction under the first limb of Section 10(b) of the Act, is the prima facie satisfaction of the Registrar, based on the material on record and the information available with him, that the certificate of registration was obtained by fraud or mistake. Neither has the Registrar arrived at any such prima facie view in the show-cause notice dated 15.11.2012 nor has he recorded any finding, in the impugned order dated 13.06.2013, that the certificate of registration was obtained either by fraud or mistake. Statutory orders must stand on their own legs, and their validity cannot be examined on the averments in the affidavits submitted to the Court. Public orders, publicly made, in the exercise of statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. [Commissioner of Police, Bombay Vs. Gordhandas Bhanji](#) . When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned, and cannot be supplemented by fresh reasons in the shape of affidavits or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. Orders are not like old wine becoming better as they grow older. [Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others](#), As no finding is recorded in the impugned order dated 13.06.2013, of the petitioner having committed fraud in the registration of the Union, the averments in the counter-affidavit of the 3rd respondent to the contrary cannot be accepted. As the certificate of registration of the petitioner was cancelled u/s 10(b) of the Act, it is necessary to examine whether any other ground in the first limb of the said provision is applicable.

d). MEANING OF THE EXPRESSIONS - "CEASE TO EXIST" AND "CEASE TO HAVE THE REQUISITE NUMBER OF MEMBERS"

29. Section 10(b) of the Act is attracted if the Trade Union has ceased to exist. The New Oxford Dictionary of English language defines "exist" to mean "to have objective reality or being; and live, especially in adverse conditions" The word "exist" also means "subsist" or "survive". The word "cease" has been defined in the Concise Oxford Dictionary of Current English, first edition to mean to stop, bring or come to an end. The word "ceased", when used as a verb, means discontinue, quit or stop. A Union can, therefore, be said to have ceased to exist only after it has come into existence, and not before. Cessation of the existence of a Trade Union is a post registration event, for a Union can cease to exist only after it comes into existence on its being registered u/s 8 of the Act. Section 4 of the Act, (which is attracted only before a Union is registered), has no application in examining whether or not a Trade Union has ceased to exist necessitating cancellation of its registration u/s 10 of the Act.

30. Formation of the union is a voluntary exercise. While some members who had joined the Union earlier may dissociate themselves subsequently, some others who were not members earlier may join the union either during the period when the application for registration is pending consideration, or even after the Union has been registered. The condition precedent for the exercise of jurisdiction, u/s 10(c) of the Act, is that a "Registered Trade Union" should "cease" to have the requisite number of members. The words "Registered Trade Union" and "ceases" make it clear that the power conferred u/s 10(c) can be exercised only in cases where a Trade Union ceases to have the minimum required membership after its registration.

31. Cessation of existence attracting Section 10(b), is not the same as a Union ceasing to have the requisite number of members attracting Section 10(c), for if both were to be construed as being identical, either the words "has ceased to exist" in Section 10(b) or the words "ceases to have the requisite number of members" in Section 10(c) would be inapposite surplusage. A construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided. (Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. [Gwalior Rayons Silk Mfg. \(Wvg.\) Co. Ltd. Vs. Custodian of Vested Forests, Palghat and another, Smt. Shyam Kishori Devi Vs. Patna Municipal Corporation and Another, A.R. Antulay Vs. Ramdas Srinivas Nayak and Another, Dental Council of India and Another Vs. Hari Parkash and Others, J.P. Bansal Vs. State of Rajasthan and Another, and State of Jharkhand and Another Vs. Govind Singh](#), . Courts should not, ordinarily, add words to a statute or read words into it which are not there, especially when a literal reading thereof produces an intelligible result. ( [Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others](#), Effect should be given to all the provisions and a construction that reduces one of the provisions to a "dead letter" must be avoided. ( [Anwar Hasan Khan Vs.](#)

[Mohammad Shafi and Others](#), While Section 10(b) would operate only if the Union no longer remains in existence, Section 10(c) would apply when the Union remains in existence but with a membership below the statutorily prescribed minimum. Merely because the membership of a Union falls below the minimum stipulated 100 workers, does not mean that the Union has ceased to exist attracting Section 10(b) of the Act. While Section 10(b) empowers a certificate of registration to be cancelled where such a certificate has been obtained by fraud or mistake which are pre-registration events, cessation of existence of a union u/s 10(b), and the Union ceasing to have the requisite number of members u/s 10(c), are post-registration events. Both Sections 9(A) and 10(c) were inserted by Act 31 of 2001 with effect from 09.01.2002. It is only for non-compliance with the conditions stipulated in Section 9A of the Act, which requires the registered Trade Union to continue at all times to have not less than 10% of the total strength or 100 workmen of the establishment as its members, can the Registrar exercise jurisdiction u/s 10(c) of the Act.

e). THE SATISFACTION OF THE REGISTRAR, u/s 10(B) & (C) OF THE ACT, MUST BE BASED ON REASONABLE GROUNDS:

32. A provision which leaves an unbridled power to an authority cannot in any sense be characterised as reasonable. Unchanneled and arbitrary discretion is patently violative of the requirements of reasonableness in Article 19 and of equality under Article 14. [P.N. Kaushal and Others Vs. Union of India \(UOI\) and Others](#), [LaLa Hari Chand Sarda Vs. Mizo District Council and Another](#), . If an uncontrolled or unguided power is conferred, without any reasonable and proper standards or limits being laid down in the enactment, the statute may be challenged as violating Part-III of the Constitution. [Maneklal Chhotalal and Others Vs. M.G. Makwana and Others](#), . There is a broad distinction between exercise of discretion with regards a fundamental right guaranteed by the Constitution and a right conferred by a Statute. If the statute deals with a right, which is not fundamental in character, the Statute can take it away, but a fundamental right the statute cannot take away. Discretion, whereby restrictions are sought to be imposed on fundamental rights, must be differentiated from discretion in respect of matters not involving fundamental rights. [Pannalal Binraj Vs. Union of india \(UOI\)](#), . Restrictions, left to the examination of the executive alone, makes them unreasonable restrictions. ( [Benarasi Das Modi and Others Vs. State of Pepsu and Others](#) If the power of the "competent authority" is unguided, and he has unfettered and arbitrary authority to exercise his discretion "at his sweet will and pleasure", the existence of a provision for appeal might not impart validity to such legislation. [Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi](#),

33. The satisfaction of the Registrar to cancel registration of a Trade Union, under clauses (b) and (c) of Section 10, is no doubt subjective. The words "objective" and "subjective" have a philosophical flavour but, put in ordinary language, the objective test merely means an "external standard to be applied by some one other than the

authority imposing the restriction, namely by a judge"; whereas the subjective test excludes an external yardstick and means the decision of the person who acts - may be reasonably, but still it is his decision and not the decision of any one else. [Benarasi Das Modi and Others Vs. State of Pepsu and Others](#) [Brajnandan Sharma Vs. The State of Bihar,](#)); Liversidge v. Anderson 1942 AC 206). A law which makes vague provisions, the application of which depends entirely on the subjective determination of the executive, cannot be called a reasonable restriction on fundamental rights. [Benarasi Das Modi and Others Vs. State of Pepsu and Others](#)

34. Is Section 10 of the Act vague, and the power conferred on the Registrar thereunder unguided and unfettered? While the Act and the Regulations (both Central and State) do not prescribe the procedure to be followed by the Registrar for cancelling the registration of a Trade Union, the words "is satisfied", used both in Section 10(b) & [c] of the Act, affords sufficient guidance for the manner in which the power conferred by these clauses should be exercised. The words "is satisfied" must be intended to serve in some sense as a condition limiting the exercise of an otherwise arbitrary power. If the question whether the condition has been satisfied is to be conclusively decided by the man who wields the power, the value of the intended restraint is in effect nothing. The words "is satisfied" must be read as imposing a condition that there must, in fact, exist such reasonable grounds, known to the person, before he can validly exercise the power. (Attorney-General and Saint Christopher, Nevis and Anguilla v. Reynolds (1979) 3 ALL ER 129).

35. The satisfaction of the Registrar must be founded on grounds specified in the order, and the power to cancel registration is not to be exercised on his mere whim or fancy. The certificate of registration of a Trade Union can be cancelled by the Registrar under the first limb of Section 10(b) only if there exists reasonable grounds for him to arrive at the satisfaction that the certificate of registration was obtained by the Union by fraud or mistake or that the Union has ceased to exist. Likewise, there must be reasonable grounds for the Registrar to arrive at the satisfaction, u/s 10(c) of the Act, that the Union has ceased to have the requisite number of members. The Registrar failed to notice the distinction between cessation of the existence of a Trade Union in which case alone could the certificate of registration have been cancelled u/s 10(b) of the Act, and the membership of the Union falling below the stipulated minimum membership u/s 9A of the Act in which case the certificate of Registration could only have been cancelled u/s 10(c) of the Act.

f). THE ORDER, CANCELLING THE REGISTRATION OF A TRADE UNION, CANNOT BE PASSED ON GROUNDS EXTRANEIOUS TO THOSE REFERRED TO IN THE NOTICE ISSUED UNDER THE PROVISIO TO SECTION 10 OF THE ACT:

36. The Trade Unions Act, 1926 is an Act to provide for the registration of Trade Unions and, in certain respects, to define the law relating to registered Trade Unions. The said Act regulates the right of workmen to register themselves as a Trade Union. Though a legislative policy may be expressed in a statute, it must

provide a suitable machinery for implementing that policy in such a manner that such implementation does not result in undue or excessive hardship and arbitrariness. ( [LaLa Hari Chand Sarda Vs. Mizo District Council and Another](#), The Court has to look at both the substantive and the procedural aspects of the restrictions in order to judge the reasonableness of the provisions. ( [Benarasi Das Modi and Others Vs. State of Pepsu and Others](#) [Bhagwat Singh Vs. State of Rajasthan](#),

37. The notice issued under the proviso to Section 10, dated 15.11.2012, referred to the representation of 88 individual workers that their signatures were misrepresented and forged and some of them were forced to join the Union. Mere reference to the information received by him, in the notice given to the Union, would not suffice as the proviso to Section 10 obligates the Registrar to specify the grounds, on which he proposes to cancel the certificate of registration, in the notice issued by him to the Union. The petitioner was not even put on notice that its registration was proposed to be cancelled, in terms of Section 10(b) of the Act, for fraud or mistake or for the reason that it had ceased to exist. On the contrary, they were specifically informed that they had failed to show, in terms of Section 9A of the Act, that they had 10% of the workmen employed in the 4th respondent as its members after 18.10.2012 (i.e. subsequent to their registration as a Union on 18.10.2012, and not prior thereto). Exercise of jurisdiction to cancel registration, for failure to comply with the requirements of Section 9A of the Act, is referable only to Section 10(c) and not to Section 10(b) of the Act, as the former is attracted when the membership of a registered Trade Union falls below the statutorily prescribed minimum, while the latter is applicable only when the Union no longer survives or subsists. It is evident, therefore, that Registrar initiated proceedings against the petitioner-Union, only u/s 10(c) of the Act, for violation of the conditions stipulated in Section 9A of the Act.

38. While the show-cause notice dated 15.11.2012, issued in compliance with the proviso to Section 10, is in terms of Section 10[c] of the Act, the impugned order of cancellation dated 13.06.2013 has been passed on the satisfaction of the Registrar u/s 10(b), and not u/s 10[c], of the Act. The jurisdictional facts, essential to attract the provisions of Section 10(b) of the Act, has not been referred to in the notice dated 15.11.2012. The fact or facts upon which the jurisdiction of an authority depends is a "jurisdictional fact" the existence of which is the sine qua non, or the condition precedent, to the assumption of jurisdiction by the authority. Once such a jurisdictional fact is found to exist, the authority has the power to decide adjudicatory facts or facts in issue. [Carona Ltd. Vs. Parvathy Swaminathan and Sons](#), ; Halsbury's Laws of England (4th Edn.), Vol. 1, Para 55, p. 61; Reissue, Vol. 1(1), Para 68, pp. 114-15; [Chaube Jagdish Prasad and Another Vs. Ganga Prasad Chaturvedi, Arun Kumar and Others Vs. Union of India \(UOI\) and Others](#), The show cause notice should reflect the jurisdictional facts based on which the final order is proposed to be passed. The person proceeded against would then have an opportunity to show

cause that the authority had erroneously assumed existence of a jurisdictional fact and, since the essential jurisdictional facts do not exist, the authority does not have jurisdiction to decide the other issues. As the petitioner Union was neither put on notice nor were they informed of the proposal to cancel their registration u/s 10(b) of the Act, the requirement of affording the petitioner Union a reasonable opportunity to show cause, as stipulated under the proviso to Section 10 of the Act, cannot be said to have been complied with.

g). SECTIONS 4(1) & (2) OF THE ACT: ITS SCOPE:

39. In his order dated 13.06.2013 the Registrar has referred to Section 4(1) of the Act, read with the first proviso thereto, which require the Trade Union of workmen to have at least 10% of the workmen, or 100 workers, of the establishment as its members as a condition precedent for its registration as a Trade Union. The Registrar has, however, failed to take note of Section 4(2) of the Act which stipulates that, where an application has been made under sub-section (1) for the registration of a Trade Union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application but before registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be the members of the Trade Union or have given notice in writing to the Registrar dissociating themselves from the application. The petitioner Union submitted an application for registration of their Union on 02.10.2012 (receipt of which was acknowledged by the office of the 3rd respondent on 16.10.2013), and the Registrar of Trade Unions issued a certificate of registration in their favour on 18.10.2012. Even if less than half the total number of persons, who made the application, had ceased to be the members of the Trade Union after the application was made, but before the Trade Union was registered, the application for registration of the Union would not be rendered invalid thereby. Section 4(1) of the Act obligated the Registrar to ascertain whether the Petitioner-Union had the minimum required strength of 10% of the workmen, or 100 workers, in the establishment of the 4th respondent on the date of its registration. He ought to have verified whether the 88 workmen, who submitted a representation to him, were never the member of the Petitioner Union, and registration of the Union was obtained by fraud; or they had disassociated themselves from the petitioner Union between the date of the submission of the application and the date of registration of the Union.

III. VIOLATION OF PRINCIPLES OF NATURAL JUSTICE:

40. Sri K.S. Murthy, Learned Counsel for the petitioner, would complain of violation of principles of natural justice. According to the Learned Counsel, no notice was given before an inquiry was held; the statements allegedly made by workers, against the petitioner union, should have been furnished, and the Union should have been given an opportunity to cross examine or atleast explain, answer or controvert the statements allegedly made against them; and principles of natural



justice are to be read into the scheme of the Act in the absence of rules regarding the procedure to be followed.

41. On the other hand Sri M. Radhakrishna Murthy, Learned Counsel for the 4th respondent, would submit that the proviso to Section 10 of the Act merely requires two months advance notice to be given to the Union, specifying the grounds on which registration of the trade union is sought to be cancelled; issuance of such prior notice is sufficient compliance with principles of natural justice; the Registrar of Trade Unions merely exercises administrative powers; he is neither a judicial nor a quasi-judicial authority; and as the impugned order, passed by the Registrar, is only an administrative order, failure to comply with the principles of natural justice is of no consequence.

42. Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and is a widely pervasive rule affecting large areas of administrative action. The test to be adopted is whether the procedure followed was fair in all the circumstances. The inquiry must, therefore, always be: does fairness in action demand that an opportunity to be heard should be given to the person affected? Now, if this be the test of applicability of the doctrine of natural justice, there can be no distinction between a quasi-judicial function and an administrative function for this purpose. The aim of both an administrative inquiry as well as a quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or, to put it negatively, to prevent miscarriage of justice it is difficult to see why it should be applicable to a quasi-judicial inquiry and not to an administrative inquiry. It must logically apply to both. Sometimes an unjust decision in an administrative inquiry may have far more serious consequences than a decision in a quasi-judicial inquiry and hence the rules of natural justice must apply equally in an administrative inquiry which entails civil consequences [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another](#), . The rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case and the framework of the law under which the enquiry is held. Whenever a complaint is made before a Court that some principles of natural justice had been contravened, the Court has to decide whether observance of that rule was necessary for a just decision on the facts of the case. [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another](#), ; [Suresh Koshy George Vs. University of Kerala and Others](#), ; [The D.F.O., South Kheri and Others Vs. Ram Sanehi Singh](#),

a). PRINCIPLES OF NATURAL JUSTICE: ITS APPLICATION TO STATUTES WHICH AFFECT FUNDAMENTAL RIGHTS:

43. As a group of citizens have the fundamental right, under Article 19(1)(c) of the Constitution, to form themselves into a Union, cancellation of registration would result in denial of such a fundamental right and, consequently, the Registrar can exercise his discretion to cancel registration only in compliance with the principles

of natural justice - giving an opportunity of hearing to the Trade Union. (Nagda Rashtra Sevak Karmachari Congress v. Industrial Court 1997 (77) FLR 139). Where hearing is obligated by a statute, which affects the fundamental right of a citizen, the duty to give the hearing sounds in constitutional requirement and failure to comply with such a duty is fatal. The order of an administrative authority, charged with the duty of complying with natural justice in the exercise of power before restricting the fundamental right of a citizen, is void and ab initio of no legal efficacy. The duty to hear manacles his jurisdictional exercise, and the only course is to treat as void and ineffectual to bind parties, from the beginning, any order made without hearing the party affected if the injury is to a constitutionally guaranteed right. Consequential administrative inconvenience is out of place where an administrator abandons constitutional discipline and limits of power. A determination is no determination if it is contrary to the constitutional mandate of Article 19. [Nawabkhan Abbaskhan Vs. The State of Gujarat](#),

b). PRINCIPLES OF NATURAL JUSTICE MUST BE READ INTO THE UNOCCUPIED PROVISIONS OF A STATUTE:

44. The principle of audi alteram partem, which mandates that no one shall be condemned unheard, is a part of the rules of natural justice. [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another](#), ). Any procedure which permits impairment of a constitutional right, without giving reasonable opportunity to show cause, cannot but be condemned as unfair and unjust. Absence of an express provision in the Act, which requires that the audi alteram partem rule be followed, is not conclusive of the question. If the statute makes itself clear on this point, then no more question arises. But even when the statute is silent, the law may in a given case make an implication and apply the principle that, although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another](#), Principles of natural justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary. [Institute of Chartered Accountants of India Vs. L.K. Ratna and Others](#), Courts have generally read into the provisions of the relevant sections a requirement of giving a reasonable opportunity of being heard before an order is made which would have adverse civil consequences for the parties affected. [C.B. Gautam Vs. Union of India and Others](#),

45. The duty to act judicially need not be super-added, but may be spelt out from the nature of the power conferred, the manner of exercising it and its impact on the rights of the person affected and where it is found to exist, the rules of natural justice would be attracted. ( [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another](#), Cancellation of registration is a matter of serious concern and consequences. (Dockyard Labour Union : 1995 Suppl. (4) SCC 544). In the absence of any express provision excluding its application, principles of natural justice must be



read into the provisions of Section 10 of the Act, including its proviso, since cancellation of registration not only has civil consequences but would also result in the fundamental rights of citizens (a section of the workmen in the establishment), under Article 19(1)(c) of the Constitution of India to form a Union, being unreasonably curtailed. The requirement of giving a notice, under the proviso to Section 10, is only to give the Trade Union an opportunity of showing cause against the proposed cancellation for, otherwise, the requirement of giving such a notice would be an empty ritual and a useless formality. As the notice, under the proviso to Section 10 of the Act, is mandatory, the Registrar is not competent to pass an order cancelling the registration without giving an opportunity to the Trade Union to show-cause against the proposed action. (Mysore Iron and Steel Works, Labourers' Association 1972 LIC 799).

c). INFORMATION OBTAINED BY THE REGISTRAR CANNOT BE USED TO CANCEL REGISTRATION OF A TRADE UNION UNLESS IT IS MADE AVAILABLE TO THE UNION AND THEY ARE GIVEN A REASONABLE OPPORTUNITY OF BEING HEARD IN THIS REGARD:

46. Freedom of association is one among the founding commitments and severe restraints thereon must be strictly construed, not in the name of natural justice -- an elusive phrase -- nor in literal loyalty to the Section but in plenary allegiance to the paramount law. In Indian constitutional law, natural justice does not exist as an absolute jural value but is humanistically read by Courts into those great rights enshrined in Part III as the quintessence of reasonableness. One of the first principles of this sense of justice is that you must not permit one side to use means of influencing a decision which means are not known to the other side [Nawabkhan Abbaskhan Vs. The State of Gujarat](#) ). Action, resulting in civil consequences, being taken on material which is not only not supplied but not disclosed to the person against whom action is taken cannot be countenanced by Courts. Procedural fairness is as much of importance as the substantive law itself. [State Bank of India and others Vs. D.C. Aggarwal and another](#) , . The obligation which the law casts on the authority is that they should not act on information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. Rules of natural justice are violated, and the proceedings would stand vitiated, if the authority concerned acts upon information collected by it and the said information has not been disclosed to the party, against whom the material has been used. ( [State of Assam and Another Vs. Mahendra Kumar Das and Others](#) , ; [State of Mysore Vs. S.S. Makapur](#) , ; [Central Bank of India Ltd. Vs. Prakash Chand Jain](#) , [Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi](#) ,

47. In the case on hand, a complaint is said to have been received from 88 workmen contending that they were not the members of the petitioner-Union. The 4th respondent (employer) also submitted a representation enclosing the

representations of the 88 workmen. Curiously an enquiry was caused, and the statements of some of the 88 workmen were recorded, within the premises of the 4th respondent that too behind the petitioner's back. While the complaint of the 88 workmen may have been relevant in considering whether or not registration was obtained by the petitioner Union by fraud, the contents of the statements of 46 workmen, which also forms part of the record placed before this Court, shows that a few of them had complained of forgery and misrepresentation, and a few others had expressed their disinclination to continue as members of the petitioner Union. It was, therefore, imperative for the Registrar to ascertain whether or not those who had expressed their disinclination to continue as members of the Union had, in fact, associated themselves with the petitioner Union earlier when the Union submitted its application for registration and had discontinued their association after its registration. In either event, the 3rd respondent could not have conducted an enquiry behind the petitioner's back or relied on material not furnished to the petitioner along with the notice issued under the proviso to Section 10 of the Act. While the notice, under the proviso of Section 10 of the Act, was issued on 15.11.2012, the statements of the 46 workmen were recorded much later on 22.05.2013 and 12.06.2013. Copies of the statements recorded on 22.05.2013 and 12.06.2013, which form the basis of the order of cancellation of the certificate of registration dated 13.06.2013, were neither furnished to the petitioner Union nor were they given an opportunity to explain or rebut the contents of the said statements. It is evident, therefore, that the impugned order was passed in violation of principles of natural justice.

IV. CANCELLATION OF REGISTRATION FOR VIOLATION OF SECTION 9A - STRENGTH OF THE UNION MUST BE DETERMINED ON THE DATE OF THE NOTICE ISSUED UNDER THE PROVISIO TO SECTION 10 AND NOT ON THE DATE OF REGISTRATION OF THE UNION.

48. Sri K.S. Murthy, Learned Counsel for the petitioner, would submit that, even if 35 members are said to have withdrawn their membership of the union, the union strength would not fall below hundred; the official respondents were informed on 10.01.2013 that the petitioner has a membership of 319 members; this rise in strength was not considered at all; and the inquiry should not have been conducted in the premises of R4, with notice to R4 management but not to the petitioner.

49. On the other hand Sri M. Radhakrishna Murthy, Learned Counsel for the 4th respondent, would submit that the Registrar did not allow the representatives of Respondent No. 4 to be present while conducting the enquiry; if the petitioner union genuinely has the requisite minimum statutory strength of 100 workers it can seek fresh registration, as cancellation of registration is not a bar to apply for registration afresh; the very fact that the petitioner union has opted to litigate, instead of seeking fresh registration, shows that it does not continue to have the requisite physical membership of 100 workmen, and seeks to continue its existence relying

on fabricated and false documents.

50. The petitioner Union, vide letter dated 10.01.2013 (i.e., the reply submitted by them to the notice issued under the proviso to Section 10 of the Act dated 15.11.2012), informed the Registrar that the Union had obtained membership of 319 workers as on date. Before satisfying himself whether or not the petitioner Union had, at any time after its registration, ceased to have the requisite number of members as stipulated u/s 9A of the Act, necessitating action being taken u/s 10[c] of the Act, the Registrar ought to have not only enquired whether the 88 workmen, who had submitted a complaint, ceased to remain as members of the Union, but should have also ascertained whether any new members had joined the petitioner Union after its registration. The Registrar has not undertaken any such verification exercise. Again by letter dated 23.02.2013, the petitioner informed the Registrar that the members of their Union were ready to physically appear before him at his office to prove that they had the required minimum membership. The impugned order dated 13.06.2013 gives no clue of the reasons which weighed with the Registrar in not ascertaining whether or not the petitioner Union had the requisite number of members, after its registration, as stipulated u/s 9A of the Act.

a). SHOULD THE PERSON COMPETENT TO CANCEL REGISTRATION ALONE CONDUCT THE ENQUIRY AND NOT DELEGATE IT TO ANOTHER OFFICER?

51. Sri K.S. Murthy, Learned Counsel for the petitioner, would submit that it is only the authority, competent to pass orders, which should conduct the inquiry; and the Registrar of Trade Unions could not have deputed the Asst. Commissioner of Labour to conduct an inquiry.

52. The enquiry officer causes an enquiry, on the allegations levelled against the Union, as the delegate of the Registrar of Trade Unions. The object of the enquiry is to enable the Registrar to hold an investigation into the allegations so that he can, in due course, consider the evidence adduced and decide whether the said allegations are established. The interposition of the enquiry, held by the enquiry officer, does not alter the true legal position that it is the Registrar who is empowered to take action for cancellation of the certificate of registration of the Trade Union u/s 10 of the Act. [Union of India \(UOI\) Vs. H.C. Goel](#),

b. VERIFICATION OF THE UNION STRENGTH SHOULD BE AN INDEPENDENT EXERCISE AND THE ENQUIRY SHOULD NOT HAVE, IN THE FACTS OF THE PRESENT CASE, BEEN HELD IN THE ESTABLISHMENT OF THE FOURTH RESPONDENT:

53. The record placed before this Court contains the memo dated 22.05.2013 issued by the Security Establishment of the 4th respondent, to their security agency, directing them to allow 88 employees to attend before the enquiry team at the M.R.F. training centre between 11.00 A.M. and 1.00 P.M. to record their statements. It is disconcerting that the enquiry was caused by the Registrar of Trade Unions in the premises of the 4th respondent which has no say, under the Act and the

Regulations, in either the registration of a Trade Union or in the cancellation of its registration. In the light of the allegations and counter allegations made by the petitioner Union and the 4th respondent against each other, alleging that the other had coerced the workmen either to join or to withdraw from the Union, an independent verification exercise, regarding the membership of the petitioner Union, ought to have been undertaken by the Registrar, and not in the office of either the petitioner Union or the 4th respondent. Nothing prevented the Registrar from causing an enquiry in his own office or to direct the petitioner Union to produce proof of their membership not having fallen below the statutorily prescribed minimum.

c. THE REGISTRAR CANNOT SURRENDER THE DISCRETION CONFERRED UNDER THE ACT EITHER TO REGISTER OR TO CANCEL REGISTRATION OF THE UNION:

54. The satisfaction, under clauses (a) & (b) of Section 10 of the Act, is that of the Registrar of Trade Unions and not that of either the 1st or 2nd respondents. The records placed before this Court, by the Learned Government Pleader for Labour, discloses that the 2nd respondent had directed the 3rd respondent (the Registrar), vide letter dated 20.04.2013, to pass necessary orders after careful verification and to submit an action taken report. The 4th respondent, by its letter dated 01.06.2013, informed the 1st respondent that the office bearers of the petitioner Union started applying pressure on some of the workmen who participated in the enquiry threatening and abusing them outside the office premises, there was disturbance of peace in the factory which could cause damage to the work in progress, it may ultimately result in stoppage of work, and a suitable decision be taken in the matter. Based on the said letter of the 4th respondent, the 1st respondent requested the 3rd respondent-Registrar to immediately intervene in the matter, and take necessary steps as per law, to ensure normalcy in the factory and to submit his action taken report immediately. The Assistant Commissioner of Labour, Sanga Reddy submitted a report to the 2nd respondent on 13.06.2013 regarding the union registration dispute; the 3rd respondent-Registrar informed the 1st respondent, by letter dated 13.06.2013, of the enquiry caused by the Assistant Commissioner of Labour and that a detailed report was being submitted for his perusal and action. The record placed before this Court does not, however, contain the report said to have been submitted by the 3rd respondent to the 1st respondent. On the same date i.e., 13.06.2013, the impugned order was passed by the 3rd respondent informing the petitioner that registration of the petitioner union was liable to be cancelled. The 3rd respondent recorded his satisfaction, u/s 10(b) of the Act, and declared that the registration of the petitioner Union stood cancelled. A copy of the impugned order dated 13.06.2013 was furnished both to the petitioner and the 4th respondent; and copies thereof were submitted, both to the 1st and 2nd respondents, for their information.

55. It is evident, from the correspondence referred to hereinabove, that both the 1st and the 2nd respondents had not only monitored the entire exercise of cancellation of registration, at the behest of both the petitioner and the 4th respondent, but had also issued instructions to the 3rd respondent of the manner in which his discretion, to cancel registration, should be guided by. Statutory discretion cannot be exercised by the authority, on whom power is conferred, at the dictates of his superiors for that would amount to surrender of discretion and abdication of duty. The principles of administrative law, such as surrender of discretion and abdication of duty vitiating the decision, would apply in the case of exercise of power conferred by a statute or rules made thereunder or instruments which are statutory in character. [Irrigation Development Employees Association and Others Vs. Government of A.P. and Others](#), Exercise of statutory power partakes a quasi-judicial complexion. In the exercise of such power, the authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion. It would then not be the authority's discretion that is exercised, but someone else's. If an authority "hands over its discretion to another body it acts ultra vires". Such interference by a person or body extraneous to the power is contrary to the nature of the power conferred on the authority. [State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others](#), An authority entrusted with a discretion must not, in the purported exercise of its discretion, act under the dictation of another body or person. It is enough to show that a decision, which ought to have been based on the exercise of independent judgment, was dictated by those not entrusted with the power to decide. Authorities directly entrusted with a statutory discretion are not absolved from their duty to exercise their personal judgment in individual cases, unless explicit statutory provision has been made for them to be given binding instructions by a superior. (DE SMITH'S JUDICIAL REVIEW (Seventh Edition).

V. IS THE EMPLOYER OF THE ESTABLISHMENT ENTITLED TO BE HEARD BEFORE A UNION OF WORKMEN, OF SUCH ESTABLISHMENT, IS EITHER REGISTERED OR THE CERTIFICATE OF REGISTRATION OF THE UNION CANCELLED?

56. Sri K.S. Murthy, Learned Counsel for the petitioner, would submit that there is no role for the management of an establishment in the process of registration, or cancellation of the registration, of a Trade Union; and Section 11, which enables a person aggrieved by the actions of the Registrar to prefer an appeal, does not also provide for any role for the management of the establishment in which the members of the Union are employed.

57. On the other hand Sri M. Radhakrishnamurthy, Learned Counsel for the 4th respondent, would submit that respondent No. 4, being the complainant, has every right to attend/participate/represent in the enquiry; though no statutory right is conferred under the provisions of the Trade Union Act, 1926, principles of natural justice would require the complainant to be heard; the provisions of the Trade

Unions Act, 1926 are equally silent on the aspect of hearing the office bearers of the trade union in an enquiry for cancellation of their registration; if the office bearers of the Union are given an opportunity of representation, Respondent No. 4, as the complainant and a party likely to be affected by the outcome of the enquiry, would be entitled for a similar opportunity; Respondent No. 4 is concerned that its workmen should not be represented by a fictitious union, or by a Union which has obtained registration committing fraud; and its workmen, being represented by such a Union, would result in industrial unrest and disturb industrial peace, discipline and tranquility.

58. As a Union should have the minimum membership, stipulated in the first proviso to Section 4(1) of the Act, for it to be registered as a Trade Union, and must continue at all times after its registration to have such minimum membership in terms of Section 9A of the Act, the Registrar can arrive at the satisfaction, u/s 10(b) & (c) of the Act, only on receipt of information that the Trade Union had obtained the certificate of registration by fraud or mistake or that it has ceased to exist or that it no longer has the requisite number of members. In the absence of any statutory provision to the contrary the Registrar would be entitled, in the aforesaid contingencies, to initiate action for cancellation of registration on receipt of information, whatever be its source. While the workmen, who did not become members or do not wish to continue as members of the Trade Union, can make a complaint, such information can also be furnished by the employer on their being informed by the workmen that they were never, or have ceased to be, the members of the Union. The question which necessitates examination is whether the employer is entitled to be heard thereafter?

a). IS THE MANAGEMENT OF THE ESTABLISHMENT "A PERSON AGGRIEVED" BY THE REGISTRATION OF A UNION UNDER THE ACT?

59. Unlike the proviso to Section 10 which mandates a two month prior notice to be given to the Trade Union, before its registration is cancelled, no similar statutory obligation is cast on the Registrar of Trade Unions to put the Management of the establishment on notice in this regard. It is only a "person aggrieved", by the refusal to register the Trade Union or by the cancellation of the certificate of Registration, who has been conferred the right, u/s 11(1) of the Act, to prefer an appeal against such acts of refusal or cancellation. Section 11 of the Act does not provide for an appeal to be preferred by a person aggrieved by the registration of a Trade Union or against an order refusing to cancel the certificate of Registration. A "person aggrieved", so as to be entitled to maintain the appeal, must be a man "who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something". The person aggrieved must be a man who has been refused something which he had a right to demand. It is only a person who has suffered a specific legal injury, by reason of actual or

threatened violation of his legal right or legally protected interest, who can bring an action for judicial redress. Where an applicant has a legal right or a legally protected interest, the violation of which would result in legal injury to him, there must be a corresponding duty owed by the other party to the applicant. This rule in regard to locus standi thus postulates a right-duty pattern. (Re Sidebotham, Ex parte Sidebotham 14 Ch. D. 458 : 42 LT 783; In re Reed, Bowen & Co., Ex parte Official Receiver 19 QBD 174 : 56 LT 876; and [S.P. Gupta Vs. President of India and Others](#), . The words "person aggrieved" mean a person who is wrongfully deprived of his entitlement which he is legally entitled to receive. It does not include any kind of disappointment or personal inconvenience. "Person aggrieved" means a person who is injured or one who is adversely affected in a legal sense [S. Khushboo Vs. Kanniammal and Another](#), ; [M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others](#), While an employer may well suffer discomfort or inconvenience on a Trade Union being registered, or on the Registrar refusing to cancel the registration, that, by itself, would not bring them within the fold of "any person aggrieved" enabling them to prefer an appeal against such an order.

60. While there is no express provision either in the Act, or under the Regulations, conferring any right on the employer to be heard either at the time of registration of the Trade union or during the pendency of proceedings for cancellation of registration, the question which necessitates examination is whether principles of natural justice would require such an opportunity of hearing being afforded to the employer also.

b). A FUNDAMENTAL RIGHT CAN BE CURTAILED ONLY BY LEGISLATION - PLENARY OR SUBORDINATE:

61. The only manner in which a violation of the fundamental right can be defended is by justifying the impugned action with reference to a valid law, i.e., be it a statute, a statutory rule or a statutory regulation. Executive or departmental instructions are not "law" which the State is entitled to make under the relevant clauses (2) to (6) of Article 19 in order to regulate or curtail fundamental rights guaranteed by the several sub-clauses of Article 19(1). Nor would it be "a procedure established by law" within Article 21. [Kharak Singh Vs. The State of U.P. and Others](#), . The quintessence of our Constitution is the rule of law. The State or its executive officers cannot interfere with the rights of others unless they can rely on a specific rule of law which authorises their acts. The State or its officers may not, in the exercise of their executive authority and without any legislation in support thereof, infringe upon the rights of citizens merely because the legislature of the State has the power to legislate in regard to the subject on which the executive power is exercised. Every act of the Government or its officers must, if it is to operate to the prejudice of any person, be supported by legislative authority. [Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others](#), ; [Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another](#), [Bishambhar](#)



[Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others, ; State of Madhya Pradesh and Another Vs. Thakur Bharat Singh, ; Bishan Das and Others Vs. The State of Punjab and Others, ; Wazir Chand Vs. The State of Himachal Pradesh, Ram Prasad Narayan Sahi and Another Vs. The State of Bihar and Others,](#)

62. As the fundamental right, to form a Union under Article 19(1)(c), can be restricted only by a law made under Article 19(4) -- plenary or subordinate - and not by an executive order either under Article 73 or 162 of the Constitution, a restriction cannot be imposed on a fundamental right by reading principles of natural justice into the provisions of the Act, for that would amount to a restriction of the fundamental right, under Article 19(1)(c) of the Constitution, not by legislation but by implication.

63. It is thus evident that the provisions of the Act, neither expressly nor by necessary implication, require the employer to be heard at the time of registration of a Trade Union or during the process of cancellation of the certificate of registration. Their role, if at all, is limited only to provide information to the Registrar of Trade Unions, who is required, thereafter, to independently arrive at a reasonable satisfaction whether or not the certificate of registration should be cancelled under clauses (b) and [c] of Section 10 of the Act.

VI. A REGISTERED TRADE UNION CANNOT CLAIM, AS OF RIGHT, TO BE RECOGNISED BY THE MANAGEMENT OF THE ESTABLISHMENT:

64. Sri K.S. Murthy, Learned Counsel for the petitioner, would submit that neither the Act nor the Rules require a Union to regularly/periodically report their membership strength to the Registrar; elections/verification for recognition will take care of this aspect; and registration of a Union merely facilitates entry into the electoral fray for recognition.

65. The distinction, between registration of a Trade Union and its recognition by the employer, must be borne in mind. While formation of a Union is a fundamental right, conferred on a citizen under Article 19(1)(c) of the Constitution, it does not bring within its ambit the right of a Union of workmen to be recognised by the employer. As the stream can rise no higher than the source, associations of citizens cannot lay claim to rights not open to citizens or claim freedom from restrictions to which the citizens composing it are subject [Dharam Dutt and Others Vs. Union of India \(UOI\) and Others, ; All India Bank Employees' Association Vs. National Industrial Tribunal and Others,](#) . The right guaranteed under Article 19(1)(c) extends to the formation of a Union and, in so far as the activities of the association are concerned or as regards the steps which the union might take to achieve the purpose of its creation, they are subject to such laws as may be framed and the validity of such laws is not to be tested by reference to the criteria to be found in clause (4) of Article 19 of the Constitution, for such a right guaranteed by Article 19(1)(c) does not carry with it a concomitant right that the Unions formed, for



protecting the interests of labour, shall achieve the purpose for which they were brought into existence, such that any interference to such achievement by the law of the land would be unconstitutional. [All India Bank Employees' Association Vs. National Industrial Tribunal and Others](#), ). The rights not included in the literal meaning of Article 19(1)(c), but which are sought to be included therein as flowing therefrom i.e. every right which is necessary in order that the Union brought into existence fulfils every object for which it is formed, the qualifications therefor would not merely be those in clause (4) of Article 19 but would be more numerous and very different. [Dharam Dutt and Others Vs. Union of India \(UOI\) and Others](#),

66. Even if it appears that the fundamental right, guaranteed by Article 19(1)(c) of the Constitution, may not be fully exercised without some further or additional right, such further or additional right cannot, as a matter of course, be regarded as part of the guaranteed fundamental right. The test to be applied is whether the right claimed is an integral part of the specified fundamental right or partakes of the same basic nature and character as of that fundamental right so that the exercise of such right is, in reality and substance, nothing but an incidence of the exercise of the guaranteed fundamental right. While recognition by the employer of a trade union would go a long way to make the activities of the Union more effective, from that alone it cannot be concluded that the right to form a trade union embraces within it, the right of the said union to be recognised by the employer or some other authority. Such a right must follow or flow from some other provisions of the law and, unless such a right is so acquired, it cannot be enforced. [Board of Trustees, Port of Calcutta Vs. Haldia-Calcutta Port and Dock Shramik Union and Others](#), [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another](#), ). The recognized union has the right to participate in the discussions/negotiations regarding general issues affecting all workmen/employees and a settlement, if any, arrived at as a result of such discussion/negotiations is binding on all workmen/employees. A non-recognized union cannot claim such a right, but it has the right to meet and discuss with the management/employer about the grievances of any individual member relating to his service conditions and to represent an individual member in a domestic or departmental inquiry, and in proceedings before the Conciliation Officer and adjudicator. The very fact that certain rights are vested in a non-recognized union shows that the Trade Unions Act, and the Regulations framed thereunder, acknowledge the existence of a non-recognised union. Such a union is not a superfluous entity, and has relevance in specific matters. [Chairman, State Bank of India and Another Vs. All Orissa State Bank Officers Association and Others](#), Recognition by an employer is not implicit in the fundamental freedom to form a Union. Forming a Union is independent of, and different from, its recognition. Recognition of a Union confers rights, duties and obligations. Non-conferring of such rights, duties and obligations on a Union, other than the recognised union, does not put it in an inferior position. The members of a non-recognised Union can fully enjoy their fundamental freedom of speech and expression as also to form the

union. ( [Balmer Lawrie Workers" Union, Bombay and Another Vs. Balmer Lawrie and Co. Ltd. and Others](#), Even a very liberal interpretation of sub-clause (c) of clause (1) of Article 19 cannot lead to the conclusion that the trade unions have a guaranteed right to an effective collective bargaining or to strike either as part of collective bargaining or otherwise. [All India Bank Employees" Association Vs. National Industrial Tribunal and Others](#),

## VII. OTHER CONTENTIONS:

a). ENQUIRY CAUSED BY THE REGISTRAR OF TRADE UNIONS IS BEYOND THE SCOPE OF THE COMPLAINT FILED BY THE 88 WORKMEN OR THE 4TH RESPONDENT MANAGEMENT:

67. Sri M. Radhakrishna Murthy, Learned Counsel for respondent No. 4, would submit that the Registrar of Trade Unions, instead of conducting an enquiry in terms of the complaint of the 88 workmen and the 4th respondent management, that the petitioner union did not have the requisite minimum statutory membership of 100 workmen at the time of registration and its registration was therefore liable for cancellation, had conducted an enquiry on a completely different issue, suo-motu taken up by him, "whether the petitioner union enjoyed minimum statutory membership of 100 workmen after registration or not"; such an enquiry is outside the purview of the complaints; the Registrar ought to have confined his enquiry only to the examination of 126 workmen who were shown as members, for the purpose of obtaining registration of the trade union, by the petitioner; examine whether these 126 members were members of the petitioner union or not; whether they had knowledge of registration of the trade union or not; ascertain whether the membership shown by the petitioner union, for obtaining registration, is genuine or not; whether the signatures shown in the minutes book were original or forged by examining workers from out of the 126 workers who are alleged to have subscribed their signatures for registration; ascertaining the post-registration membership strength of the petitioner union is wholly extraneous to such an enquiry; and the enquiry by the Registrar, whether the petitioner union has the statutory minimum membership of 100 workmen after registration, is beyond the scope of the complaint.

68. The complaint filed by the 88 workmen and the 4th respondent is in the nature of information furnished to the Registrar of Trade Unions. Whether, or what, action should be initiated on receipt of such information is for the Registrar to decide. If the workmen were aggrieved by the failure of the Registrar to take appropriate action on their complaint, it was open to them to institute such legal proceedings as they deemed fit. It would be wholly inappropriate for this Court to adjudicate on the alleged failure of the Registrar, in a Writ Petition filed not by the complainant-workmen but by the Union questioning the validity of the order of the Registrar cancelling their certificate of registration. In any event these aspects cannot be gone into at the behest of the 4th respondent who, as stated

hereinabove, has been assigned no role, under the Trade Unions Act and the Regulations made thereunder, either at the stage of registration of a Union or during the course of proceeding to cancel its certificate of Registration. Suffice it to note that, accepting these submissions urged on behalf of the 4th respondent, would also necessitate the impugned order dated 13.06.2013 being set aside.

b). MAINTAINABILITY OF THE WRIT PETITION:

69. Sri M. Radhakrishnamurthy, Learned Counsel for the 4th respondent, would submit that the writ petition as filed is not maintainable as no statutory rule or provision has been violated by the Respondent.

70. A constitution is the documentation of the founding faiths of a nation and the fundamental directions for their fulfillment. ( [Fatehchand Himmatlal and Others Vs. State of Maharashtra](#), The Court has been assigned the role of a sentinel on the qui vive as regards "fundamental rights" [State of Madras Vs. V.G. Row](#), The Court watches and guards the fundamental rights guaranteed by the Constitution. [Chintaman Rao Vs. The State of Madhya Pradesh](#), [Benarasi Das Modi and Others Vs. State of Pepsu and Others](#) . If the action of the executive of the State is found to infringe any of the freedoms guaranteed to him, the petitioner is entitled to a writ of mandamus. [Kharak Singh Vs. The State of U.P. and Others](#), . In the present case not only has the statutory requirement of Section 10 of the Act been violated, but the illegal order passed by the Registrar has also resulted in denial of the fundamental rights of the petitioner under Article 19(1)[c] of the Constitution of India. The contentions urged, on behalf of the 4th respondent, regarding the maintainability of the Writ Petition does not, therefore, merit acceptance.

c). ALTERNATE REMEDY:

71. Sri M. Radhakrishna Murthy, Learned Counsel for the 4th respondent, would submit that the petitioner has an alternative remedy of appeal u/s 11 of the Act; the contention of violation of principles of natural justice can also be examined by the appellate authority; and, as a statutory remedy of appeal is available to the petitioner, the present Writ Petition, under Article 226 of the Constitution of India, is not maintainable.

72. The power to issue prerogative Writs, under Article 226 of the Constitution, is plenary in nature and is not limited by any other provision of the Constitution. The High Court, having regard to the facts of the case, has the discretion under Article 226 of the Constitution to entertain or not to entertain a writ petition. It has imposed upon itself certain restrictions one of which is that, if an effective and efficacious remedy is available, it would not normally exercise its jurisdiction. But the alternative remedy would not operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an

Act is challenged. [Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, Popcorn Entertainment and Another Vs. City Industrial Development Corpn. and Another](#), Mumtaz Post Graduate Degree College v. University of Lucknow (2009) 2 SCC 630; [Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others](#),

73. Where the order, complained against, is alleged to be illegal or invalid, as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 of the Constitution. Neither is the jurisdiction of the High Court ousted nor need such a petition be rejected on the ground that an appeal lies to a higher forum. ( [Philips Worker's Union and Another Vs. Registrar of Trade Unions and Others](#), Ram and [Ram and Shyam Company Vs. State of Haryana and Others](#), The High Court may exercise its writ jurisdiction despite the fact that an alternative remedy is available, inter alia, in a case where the same would not be an efficacious one. (Mumtaz Post Graduate Degree College v. University of Lucknow (2009) 2 SCC 630).

74. As the impugned order is in violation of principles of natural justice, in excess of jurisdiction and has resulted in denial of the petitioner's fundamental rights under Article 19(1)[c] of the Constitution of India, I see no reason to relegate the petitioner to the alternative statutory remedy of an appeal under the Act.

d). SHOULD THIS COURT UNDERTAKE THE TASK OF VERIFYING WHETHER THE STATEMENTS OF THE 88 WORKMEN ARE TRUE OR FALSE? ARE THESE WORKMEN NECESSARY PARTIES TO THESE WRIT PROCEEDINGS?

75. Sri M. Radhakrishna Murthy, Learned Counsel for the 4th respondent, would submit that 88 workmen, whom the petitioner Union had shown as its members, submitted a complaint to the Registrar of Trade Unions; they had marked copies of their complaint to Respondent No. 4; on receipt of their complaints, Respondent No. 4 had addressed letter dated 29.10.2012 to the Registrar of Trade Unions complaining that the petitioner union had obtained registration by fraud, the signatures of the workmen were forged, some of the signatures of the workmen were obtained under coercion, misrepresenting facts, etc; the petitioner union did not have the requisite mandatory membership of 100 workmen as prescribed u/s 4 of the Act for obtaining registration; registration, obtained by the petitioner union by fraud, is liable to be cancelled u/s 10(b) and (c) of the Act; two workmen, namely Mr. S. Murali, Emp No. 1465 and Mr. M. Balaji, Emp No. 528, were shown by the petitioner Union to have attended the general body meeting convened and held for registration of the petitioner union on 02.10.2012, though they were on duty on 02.10.2012 at the relevant time of the meeting i.e., at 10.00 a.m.; their attendance sheets, muster rolls, wage slips, punch card etc., which have been filed would prove that these two workmen were on duty on 02.10.2012 at 10.00 a.m., and they did not attend the general body meeting as falsely shown by the petitioner union; this, by itself, is proof that their signatures were forged by the office bearers of the

petitioner union; some workmen, who were members of other unions, were shown by the petitioner as their members; as the impugned order was passed by the Registrar, on the complaint of these 88 workmen, they ought to have been arrayed as respondents in this writ petition; and failure of the petitioner to do so would require the writ petition to be dismissed for non-joinder of necessary parties.

76. It would be wholly inappropriate for this Court to take upon itself the task of examining whether or not the petitioner Union had the requisite number of members at the time of its registration as stipulated under the first proviso to Section 4(1) of the Act, or thereafter as required u/s 9A of the Act. These are all matters for the Registrar of Trade Unions to enquire into, and to record his satisfaction thereafter. The genuineness or otherwise of the statements of the 88 workmen, and whether or not they had participated in the general meeting held before the application seeking registration was submitted by the petitioner Union, are also matters for the Registrar of Trade Unions to consider, and not for this Court to adjudicate in proceedings under Article 226 of the Constitution of India. It is only the validity of the order of cancellation dated 13.06.2013 which is in issue in this writ petition, and not whether the statements given by the 88 workmen are true or false. The 88 workmen, who are said to have given the statements to the 3rd respondent-Registrar, are neither necessary nor proper parties to this Writ Petition and the contention urged on behalf of the 4th respondent, that failure to array them as respondents would necessitate the Writ Petition being dismissed for non-joinder of necessary parties, must fail.

#### VIII. CONCLUSION:

77. For the aforesaid reasons the impugned order dated 13.06.2013, whereby the petitioner's Certificate of Registration was cancelled, is set aside. It is made clear that this order shall not preclude the Registrar of Trade Unions from taking action in accordance with law including the observations hereinabove mentioned. The Writ Petition is, accordingly, allowed. However, in the circumstances without costs. Miscellaneous petitions pending, if any, shall also stand allowed.