

Saraswat Co-op. Bank Employees Union Vs V. State Of Maharashtra and Others

Court: Bombay High Court

Date of Decision: March 14, 1996

Acts Referred: Trade Unions Act, 1926 â€” Section 10, 28, 6

Citation: (1996) 5 BomCR 122 : (1996) 74 FLR 1945 : (1997) 1 LLJ 232 : (1996) 2 MhLj 10

Hon'ble Judges: J.K. Chandrashekhara Das, J; G.R. Majithia, J

Bench: Division Bench

Judgement

Chandrashekhara Das, J.

The petitioner is a trade union registered under the provision of the Trade Unions Act, 1926 (Act No XVI of

1926), hereinafter called "the Act". u/s 28 of the act, the petitioner is required to submit the annual returns for the period January 1 to December

31 in Form-I before April 30 of the following year. The returns for the year 1991 and 1992 could not be filed by the petitioner. A notice dated

December 17, 1993 was sent by the Registrar of Trade Unions, first respondent herein, to the petitioner reminding the petitioner that they have not

filed the returns and also calling for the explanation. It also stated that if the explanation is not filed within two months the registration of the

Petitioner Union will be cancelled. The petitioner sent a reply to the first respondent on January 19, 1994 admitting the fault of the petitioner and

also requested to grant one month's time for filing the returns. It also stated in that letter that their accounts were not finalised and it is being audited

and it will be completed in all respects within a month and that it will submit its returns as soon as it is finalised. Accordingly, the petitioner has

submitted the returns. It is borne out from the records that the returns have been submitted by the petitioner on March 13, 1994 and an

acknowledgment has been issued to that effect by the first respondent. The impugned order cancelling the registration of the petitioner union has

been passed on the same day. It is further borne out from the record that the impugned order has already been prepared on March 8, 1994. The

learned counsel for petitioner submits that this action of the respondent is vitiated by non application of mind and hence illegal. Be that as it may,

we do not propose to make any comment on this.

2. The learned counsel for the petitioner further submitted that in order to invoke the cancellation of the registration, the Registrar is empowered to

cancel the registration u/s 10 of the Trade Unions Act only if there are enough materials to establish that the petitioner commits any wilful act of

fraud or commits any contravention of the provisions of the Act etc. We see considerable force in his contention. Section 10 of the Act reads as

follows :

10. Cancellation of registration - A certificate of registration of 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, or

(b) if the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or that the Trade Union has ceased to exist or has wilfully

and after notice from the Registrar contravened any provision of this 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 :

Provide that not less than two month's 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 other wise than on the application of the Trade

Union.

3. In order to invoke registration u/s 10 of the Act there must be sufficient material before the Registrar that the Trade Union concerned should

have wilfully contravened any Provision of the Act or any Rule. Unless the intentional violation of the Rule or Act is established, the Registrar

cannot cancel the registration of a trade union. As pointed out earlier we could not find any wilful act on the part of the trade union in this case. In

fact, the petitioner union has conceded its fault and it requested time for filing the returns They also filed the return just on the date of passing the

impugned order. We find no wilful act or intention to violate the provisions of the Act on the part of the petitioner. Therefore, we find that there are

no sufficient materials to cancel the registration of the petitioner Union. The order is vitiated by non-application of mind.

4. In the result the writ petition is allowed. Rule made absolute in terms of prayer clauses (a) and (b). There shall be no order as to costs.