
(1991) 07 BOM CK 0022

In the Bombay High Court

Case No : Writ Petition No. 2475 of 1988 and 2044 of 1991

Association of Engineering Workers

APPELLANT

Vs

Dockyard Labour Union and Others

RESPONDENT

Date of Decision : 03-07-1991

Acts Referred:

Bombay General Clauses Act, 1904 — Section 21
Trade Unions Act, 1926 — Section 10

Citation : (1991) 3 BomCR 729 : (1994) 3 LLJ 242 : (1991) 1 MhLj 1278 :
(1991) MhLj 1278

Hon'ble Judges : M.L. Pendse, J;A.V. Savant, J

Bench : Division Bench

Advocate : S.J. Deshmukj and N.M. Ganguli, for the Appellant; Narayan Shete, P.M. Patel and Nishita Mhatre for R-1 and R.S. Pai, for R-2 and S.M. Dixit, for R-4 in W.P. 2475/88 and S.B. Sukhtankar, for R- 4, for the Respondent

Final Decision : Dismissed

Judgement

Pendse, J.—Both these petitions filed under Article 226 of the Constitution of India can be conveniently disposed of by common judgment as the issue raised in both these petitions is identical. The facts giving rise to filing of the two petitions are required to be briefly stated to appreciate the grievance made by the petitioner Union in both the petitions.

2. Association of Engineering Workers is a Trade Union registered under the Trade Unions Act, 1926, and represents the employees in the undertaking of Mazgaon Docks Limited, Bombay. The Association of Engineering Workers is also registered as recognised union in respect of the undertaking of respondent No. 2 u/s 11 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the MRTU & PULP Act). Respondent No. 1-Dockyard Labour Union is also a Trade Union registered under the Trade Unions Act, 1926 and filed Application No. 44 of 1987 on October 19, 1987 before the Industrial Court at Bombay for registration as a recognised

union under the MRTU & PULP Act. The application filed u/s 14 of that Act was resisted by the petitioner union by filing written objections in November 1987. The petitioner union raised a preliminary objection to the maintainability of the application on the ground that the registration of Dockyard Labour Union was cancelled by the Additional Registrar of Trade Unions, Bombay on January 30, 1981 and consequently the application for registration under the MRTU & PULP Act was not maintainable. The Dockyard Labour Union answered the preliminary objection by pointing out that the order of cancellation of the registration passed on January 30, 1981 was withdrawn by the Additional Registrar of Trade Unions, Bombay on March 12, 1981 and consequently the registration of Dockyard Labour Union was in operation and the Union can seek registration under the MRTU & PULP Act. The preliminary objection raised by the petitioner was overruled by member of the Industrial Court, Bombay by order dated July 14, 1988 passed below Exhibit U-1. the industrial Court held that in view of the withdrawal of the order of cancellation of certificate of registration, the preliminary contention of non-maintainability of the application is required to be overruled. The petitioner union preferred Writ Petition No. 2475 of 1988 to challenge legality of the order passed by the Industrial Court over-ruling the preliminary objection.

3. On June 6, 1988 Dockyard Labour Union filed Application (MRTU) No. 22 of 1988 in the Industrial Court, Bombay and u/s 13 of the MRTU & PULP Act for cancellation or derecognition of the petitioner union. The Dockyard Labour Union claimed that the petitioner's membership has for continuous period of six calendar months fallen below the minimum required u/s 11 of the Act, the petitioner union has failed to observe any of the conditions specified in Section 19 of the Act and the petitioner union is not being conducted bona fide in the interest of the employees. The petitioner union filed reply to the application, inter alia, raising a preliminary objection that the application for derecognition of the petitioner union filed by the Dockyard Labour Union is not maintainable as the said Union is not a registered Trade Union under the Trade Unions Act. The objection was that the registration of Dockyard Labour Union under the Trade Unions Act was cancelled on January 30, 1981 and the Registrar had no authority or jurisdiction to withdraw that order and the only remedy of Dockyard Labour Union was to prefer an appeal against the order of cancellation of the registration. The appeal not having been preferred, claimed the petitioner union, the order of cancellation of registration stands and the application for derecognition u/s 13 of the MRTU & PULP Act was not maintainable. The preliminary objection to the maintainability of the application raised on behalf of the petitioner union was turned down by the Industrial Court by order, dated June 1, 1991 and that order is under challenge in Writ Petition No. 2044 of 1991.

4. The question which falls for determination in these two petitions is whether the Additional Registrar of Trade Unions had power to withdraw order of cancellation of the registration passed in exercise of powers u/s 10 of the Trade Unions Act. Before advertng to the contentions urged by the learned counsel, it

is necessary to set out provisions of Section 10 of the Trade Unions Act, 1926, which deal with cancellation of registration. Section 10 reads. as under:

"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:

Provided that 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."

Section 11 of the Trade Union Act provides that any person aggrieved by the order of the Registrar withdrawing or cancelling a certificate of registration is entitled to file an appeal. The provision prescribes that the appeal is to be lodged within period of 30 days from the date of the order of the Registrar. Before examining the question as to whether the Registrar has power to withdraw the order of cancellation of registration passed u/s 10, it is necessary to ascertain when the Registrar can exercise the powers in respect of cancellation of registration. Section 10(b), inter alia, provides that if the Registrar is satisfied that the Trade Union has wilfully and after notice from the Registrar contravened any provisions of the Act, then the Registrar can withdraw or cancel the registration. The proviso clearly prescribes that the Registrar can exercise powers provided not less than two months previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate is given by the Registrar to the Trade Union. It is therefore obvious that the jurisdiction to exercise power of cancellation of registration of Trade Union is available to the Registrar only after service of two months notice in writing specifying the ground on the Trade Union.

5. The registration of Dockyard Labour Union was cancelled by the Additional Registrar of Trade Unions by communication dated January 30, 1981, and copy of which is annexed as Exhibit "D" to Writ Petition No. 2475 of 1988. The communication recites that in continuation of their letter, dated June 20, 1980 the Union is informed that in accordance with provisions of Section 10(b) of the Trade Unions Act the registration stands cancelled with effect from January 30, 1981 on the ground that after due notice from the Registrar the Union has continued wilfully to contravene the provisions of Section 22 of the Trade Unions Act by failing to send to the Registrar by the prescribed date the annual general

statement of accounts. By communication dated March 12, 1981 Dockyard Labour Union was informed that as it was found that the Union had posted the annual returns for year 1978 and 1979 by delivering the same to the Registry's office it has been decided to treat the cancellation as withdrawn. It is not in dispute that subsequent to March 1981 Dockyard Labour Union was treated as duly registered union under the Trade Unions Act and was permitted to represent the employees of respondent No. 2.

6. Shri Deshmukh, learned counsel appearing on behalf of the petitioner, submitted that once the power u/s 10(b) of the Act was exercised by the Additional Registrar and registration of Union was cancelled, then the Registrar had no authority or jurisdiction to withdraw the said order. It is not possible to accede to the submission of the learned counsel for more than one reason. In the first instance the pre requirement for exercise of powers u/s 10(b) of the Trade Unions Act is service of notice of a duration of not less than two months on the Union against which adverse order is contemplated. We enquired from Shri Deshmukh as to whether there is any material on record to indicate that such a notice was served on the union before cancellation of registration. Shri Deshmukh submitted that the Registrar was summoned before the Industrial Court to produce the record, but expressed inability to assist the Court as the relevant record was not available in the registry. Shri Deshmukh submitted that there are two circumstances on record from which it could be inferred that the requirement of the proviso to Section 10 was complied with. The learned counsel urged that the communication dated January 30, 1981 refers to the registered letter dated June 20, 1980 sent by the registry and it should be presumed that the said letter must have been the notice contemplated by proviso to Section 10 of the Trade Unions Act. It is not possible to draw such an inference in absence of copy of the letter dated June 20, 1980. The power to cancel registration of a Trade Union is a drastic power and we are not prepared to assume that the requirement of Section 10 was strictly complied with by the Registrar before exercising power of cancellation on January 30, 1981. The second circumstance to which Shri Deshmukh made reference is a note prepared by the Additional Registrar and produce before the Industrial Court. The note merely recites that the registration was cancelled on January 30, 1981 and was subsequently restored on March 12, 1981 though a note was not made to that effect in the concerned register in the Registry. The note also recites that the office copy of letter dated March 12, 1981 addressed to Dockyard Labour Union is not traceable in the Registry. We are unable to appreciate how the contents of this note can lead to the conclusion that the strict requirement of Section 10 of the Trade Unions Act were complied with before exercise of power of cancellation of registration of the Union. In absence of any material to establish that the powers were exercised by the Registrar after complying with the mandatory requirement of the Section, it must be held that the order of cancellation was a non-est and therefore has no valid existence in law and can be ignored. This conclusion is reinforced because of what the Additional Registrar did within a period of two

months from the date of passing of the order. The Union brought to the attention of the Registrar that the exercise of power was totally defective and without jurisdiction and realising that aspect the Registrar withdrew the order of cancellation . In case the initial order of cancellation was a non-est and void ab initio, then there was no occasion to withdraw the same and the withdrawal of the same by the Registrar was only to advance the cause of justice. Once the conclusion is reached that the initial order of cancellation was a non-est and was passed by the Registrar with total lack of jurisdiction, then the question of withdrawal of the order does not arise and consequently the registration of Dockyard Labour Union must be treated as valid and subsisting all along.

7. Shri Deshmukh submitted that even though the Registrar had no authority or jurisdiction to pass order of cancellation for non compliance with the requirement of Section 10, still the Registrar had no powers to withdraw the said order. The submission is that right or wrong once an order is passed by the authority, the authority becomes functus officio and the order can be set aside only by filing an appeal as prescribed u/s 11 of the Act. Shri Deshmukh urged that even in cases where the Registrar comes to a conclusion that the order of cancellation was wholly without jurisdiction or without any valid reason, still the Registrar had no authority to withdraw the same. We are unable to accept the submission of the learned counsel. The power to pass order also includes power to withdraw the same. A reference can be usefully made to the provisions of Section 21 of the Bombay General Clauses Act, 1904, which are on par with provisions of Section 21 of the Central General Clauses Act. The Section prescribes that the power to issue order includes a power to amend, vary or rescind such order. It is well settled that the authority conferred with the power to pass order can always withdraw the same, if it is found to be without jurisdiction or unsustainable. It is impossible to accede to the submission of Shri Deshmukh that once an order is passed by the Registrar, the order can be set aside only by preferring an appeal by an aggrieved party as prescribed u/s 11 of the Trade Unions Act.

8. Shri Deshmukh referred to the decision of the Division Bench reported in 1987 (55) *Factories and Labour Reports* Page 507 (between *Rashtriya Mukund Employees' Union and Mukund Iron and Steel Works Ltd. and Another*) in support of the submission that the Registrar lacks inherent authority or power to revoke or review the order of cancellation or withdrawal of registration of the Union. The Division Bench observed that in the absence of any statutory provision for revocation or withdrawal or cancellation, the Registrar cannot exercise such power and the only remedy is to file an appeal as prescribed u/s 11 of the Act. It is necessary to point out that in the case before the Division Bench finding was recorded that the order of cancellation of registration did not suffer from any infirmity and then the question arose as to whether such order could be withdrawn. The observations made by the Division Bench must be read in the background of the peculiar facts of that case. The attention of the Division Bench was not invited to provisions of Section 21 of the General Clauses Act. The Division Bench realised that there could be cases where the Registration is

cancelled in breach of the statutory provisions, like without giving the mandatory notice and then observed that in such cases it is possible that the Registrar would have power to withdraw the erroneous order. The Division Bench observed that as that was not the case on the facts before the Division Bench, it was not necessary to determine the question whether the Registrar can exercise power of withdrawal of order of cancellation when such order was patently illegal. In our judgment, the Registrar who is conferred with power of cancellation is also conferred with the inbuilt power to withdraw the same, if it is found that the power was exercised in breach or in violation of the statutory provisions. In our judgment, the cancellation of registration is a matter of serious concern and consequences and the powers are available with the Registrar to correct the mischief done in cancellation of registration without jurisdiction. In our judgment, the decision of the Division Bench referred to by Shri Deshmukh in no way takes away the power of the Registrar to withdraw the order of cancellation passed without jurisdiction.

In the present case, in our judgment, the order of cancellation was passed without jurisdiction as nothing was brought to our attention to establish that the power of cancellation was exercised after complying with the mandatory requirement of the Section and consequently the question of withdrawal of such erroneous order does not arise, the order of cancellation being non-est. Even otherwise the Registrar had ample powers to withdraw the order of cancellation on realisation of mistake and on such withdrawal the registration of Dockyard Labour Union remained in operation all along. In these circumstances we are unable to find any infirmity in the conclusion recorded by the Industrial Tribunal in both the petitions holding that Dockyard Labour Union is properly registered under the Trade Unions Act, 1926 and the registration is valid and subsisting. In our judgment, there is no merit in the two petitions and the petitions are required to be dismissed.

9. Accordingly, rules in each of the petition stands discharged. In the circumstances of the case there will be no order as to costs.