

(2017) 08 BOM CK 0169
In the Bombay High Court
Case No : 2687 of 2006

I. A. Saiyed

APPELLANT

Vs

State of Maharashtra & Ors.

RESPONDENT

Date of Decision : 11-08-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Trade Unions Act, 1926, Section 4, Section 30, Section

Citation : (2017) 08 BOM CK 0169

Hon'ble Judges : S. C. Dharmadhikari, Vibha Kankanwadi

Bench : DIVISION BENCH

Advocate : P. M. Patel, R. S. Pawar, Rahul L. Nerlekar

Judgement

1. By this Petition under Article 226 of the Constitution of India, the petitioner challenges the order passed by the 2nd respondent dismissing the complaint preferred by the petitioner.
2. The impugned order is passed by the Deputy Registrar, Trade Unions, a Authority under the Trade Unions Act, 1926, Nashik Division, Nashik in Original Application No. 128 of 2005 and dated 31st December, 2005.
3. The only question that requires an answer in this Petition is whether the Federation of Labour Law Practitioners" Association, respondent no. 3 to this Petition, can obtain registration under the Trade Unions Act, 1926 (for short, "the said Act") on the basis that it is a Trade Union as defined in Section 2 clause (h) of the said Act.
4. The petitioner, a practicing advocate and registered with the Bar Council of Maharashtra and Goa, has filed this Petition impleading the State of Maharashtra, the 2nd respondent-an authority vested with the power to register Trade Unions under the said Act, the 3rd respondent-Federation and equally, the Bar Council of Maharashtra and Goa and the Bar Council of India.

5. The petitioner states that the position and status of an advocate under the Advocates Act, 1961 cannot be lost sight of. It is the Advocates Act, 1961 which applies to such professionals. When such professionals organize themselves and form associations, they may as well be permitted to do so and enroll as members even non-advocates, but surely, such persons are practicing before a Court of Law. In the present case, they are practicing before the Labour and Industrial Courts across the State of Maharashtra. They have formed associations at district level and such district level associations have, thereafter, organized themselves into a Federation which is the 3rd respondent. In that sense, it is an apex body of the associations at the district level. However, but for the Mumbai Association of Labour Law Practitioners, other associations have obtained registration under the said Act. Such registration could not have been obtained by them, nor the authority could have issued a certificate of registration as Trade Union. That is how the petitioner - complainant, invoking Section 10 of the said Act, applied for cancellation of the registration in favour of the 3rd respondent to this Petition. He made the requisite application, alleging that the certificate has been obtained by mistake. The authority has been misled in believing that this is a Trade Union and which satisfies the requirement stipulated in the definition of the said term as appearing in Clause (h) of Section 2 of the said Act.

6. After alleging thus, and making an application in the prescribed form for cancellation of registration, the petitioner realized that the illegality in the grant of certificate of registration was not corrected. The petitioner was, therefore, constrained to approach this Court. It is the grievance of the petitioner that an application seeking cancellation of registration was made to the Deputy Registrar functioning at Nashik. It is from that Registrar's office that the certificate was obtained by the 3rd respondent. The petitioner was called upon to appear before the Registrar pursuant to his complaint. However, as there was no action taken pursuant to his complaint, that the petitioner moved a Writ Petition in this Court being Writ Petition No. 6128 of 2005. The Petition was filed seeking a mandamus or any other appropriate writ, order or direction in the nature thereof, directing this Deputy Registrar, Trade Unions, Nashik, to decide the application for cancellation of registration in accordance with law.

7. On such a Petition, this Court made the following order on 22nd September, 2005:

"- Rule. Heard forthwith. The main relief as sought in the petition by the petitioner is the respondent No.2 be directed to scrutinise the complaint of the petitioner dated 24th February, 2005 at Exhibit "A" to the petition and adopt necessary action thereof in a time bound manner. On behalf of the respondents who have put in appearance, their learned Counsel submit that there is a Civil suit pending being S.C. Suit No.3323 of 2005 filed before the Bombay City Civil Court at Mumbai and in these circumstances the petitioner should elect either to proceed under the provisions of the Trade Unions Act or in a Civil Suit and not both. 2. At this stage it is not necessary for us to decide the controversy

considering the order to be passed. The application by the petitioner before the respondent No.2 is under Section 10 of the Trade Unions Act. Considering that, we direct the respondent No.2 to dispose of the representation, if need be, by giving a fresh hearing to all the parties. It is made clear that it will be open to the contesting respondents to raise all objections including the objection that the respondent No.2 cannot exercise jurisdiction because a Civil Suit is pending. We make it clear that we have not decided any issue on merits and all questions are left open in law before the respondent which he has to consider while disposing of the application under section 10 of the Trade Unions Act. Considering the controversy the respondent No.2 is directed to dispose of the representation within three months from the date of first appearance of the parties before the respondent No.1 on 7 th October, 2005 at 3.00 p.m.

3. With the above observations, petition disposed of accordingly."

8. It is pursuant to this order and direction of the Court that the 2nd respondent made the necessary inquiry. He came to the conclusion that the certificate of registration is not vitiated in the manner set out in Section 10 of the said Act.

9. It is this order which is challenged in this Petition.

10. Mr. Patel, learned counsel appearing for the petitioner would submit that the 3rd respondent is an association of Labour Law Practitioners. He would submit that the association may comprise of the Labour Law Practitioners, who need not necessarily be advocates enrolled under the Advocates Act, 1961. They could be consultants or representatives permitted to appear and address the Labour Courts or practice in Labour Law. However, given the definition of the term "Trade Union" as appearing in Section 2 Clause (h) and the further provisions of the said Act enabling registration of a Trade Union, the 3rd respondent could not have been registered as a Trade Union. Even if the member associations were registered as a Trade Union, with the exception of the Mumbai Association, still such Federation does not answer the definition of the term "Trade Union". The certificate was obtained and granted under mistake.

11. Mr. Patel would submit that as a responsible and honourable member of the legal profession, the petitioner brought to the notice of the authorities under the said Act that a registration obtained and granted under a mistake or the authority being misled about the status and position of the 3rd respondent in law, deserves to be cancelled forthwith. Registration of a Trade Union mandates that it is qua an industry or a specific industry. The registration is qua an industry and not in the abstract or in vacuum. Therefore, unless and until the pre-condition and pre-requisites set out in law were satisfied, such registration could not have been granted. The grant of registration is ex facie illegal and it must be cancelled.

12. Mr. Patel has made a serious grievance that barring reproduction of the rival versions, the 2nd respondent, who is duty bound in law to rule upon the petitioner's complaints or objections, has failed to render any decision in

accordance with the mandate of the said Act. He was directed to dispose of the complaint. That complaint alleged that the registration of the 3rd respondent was obtained or granted under mistake, i.e. is a mistake of law. On such serious complaint, beyond reproducing the rival versions, the authority has not rendered any finding and conclusion, much less assigned any cogent and satisfactory reasons to dismiss petitioner's complaint. That was the duty and obligation on him and if he has failed to perform it, then, such an order can be interfered with by this Court in its writ jurisdiction. The writ jurisdiction is meant, and particularly through a writ of certiorari, to ensure that a authority and the tribunals subordinate to this Court act within the limits of their powers and jurisdiction. If they fail to exercise the authority vested in them by law or exceed such authority, power and jurisdiction, then, in writ jurisdiction, this Court can interfere and quash and set aside their orders. If the orders are vitiated by an error of law apparent on the face of record or by perversity, then, as well, this Court can interfere in its writ jurisdiction.

13. Looked at from any angle, according to Mr. Patel, the impugned order which sustains the registration certificate, deserves to be quashed and set aside.

14. On the other hand, Mr. Nerlekar appearing for the contesting respondent would submit that this Petition is not maintainable and deserves to be dismissed. The petitioner is not a member of the association. It is a federal or apex body of the member associations registered at district level. Though an individual may or may not be a member of the district level association, but surely, he has no locus or status in the apex level body. In such circumstances, no right vests in the petitioner to complain about the certificate of registration, nor can any prejudice be caused to him. In such circumstances, the Petition deserves to be dismissed.

15. Alternatively, and without prejudice, Mr. Nerlekar would submit that the petitioner has an alternate and equally efficacious remedy of an appeal under the said Act to impugn and challenge the subject decision. Further alternatively and without prejudice, it is submitted that the petitioner has failed to implead necessary parties, namely, the associations-members of the Federation, who are also going to be affected adversely for they are also registered as Trade Unions, as party respondents. They being necessary parties, their non-joinder is fatal. It is contended that the Federation is an association of member associations who have obtained registration under the said Act. If that registration remains intact and has not been challenged or questioned, then, the 3rd respondent's registration cannot be challenged. Apart therefrom, the definition of the term "Trade Union" must be read in a proper perspective. So read, and in the context, it would be clear that Trade Union means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations, and when there are two or more Trade Unions, there could be a Federation of Trade Unions within the meaning of this definition. If the regulations, the aims and objects of the 3rd respondent-Federation are noted, then, its registration is not illegal. The definition must be broadly and widely construed so as to subserve the

object of the Act. For all these reasons, it is submitted that the Petition be dismissed.

16. In support of his submissions, Mr. Nerlekar would rely upon the following two decisions:

1. Vinoy Kumar vs State of U.P. & Others, reported in (2001) 4 Supreme Court Cases 734 and

2. Anand Sharadchandra Oka vs University of Mumbai & Others, reported in (2008) 5 Supreme Court Cases 217

17. For properly appreciating the rival contentions, we must first notice the undisputed facts. It is common ground that the 3rd respondent is a Federation of the district level associations. The district level associations have Labour Law Practitioners as members. These Labour Law Practitioners may or may not be advocates enrolled within the meaning of the Advocates Act, 1961. However, the grievance of the petitioner was specific that he made a complaint. The complaint was that the 3rd respondent could not have been registered as a Trade Union. The registration granted to it is under a mistake of law. The argument was that the application for registration was made by suppressing a material fact that such a registration was not obtained or attempted to be obtained, but that was not granted. This was qua the Labour Law Practitioners' Association, Mumbai. The other associations and operating at district level may have obtained such registration, but they must answer the requirement for obtaining such registration as specified by the said Act.

18. Before we advert to the rival contentions on the interpretation of the definition of the term "Trade Union" as appearing in the said Act, we must dispose of certain objections raised by Mr. Nerlekar to the locus of the petitioner and the maintainability of the Writ Petition.

19. Mr. Nerlekar relied upon a judgment of the Hon'ble Supreme Court in the case of Vinoy Kumar (supra). There, the petitioner, an advocate before the Supreme Court, was aggrieved by the orders passed by the District and Sessions Judge, Varanasi dated 13th February, 2001, transferring a number of criminal cases for disposal to the Additional District and Sessions Judge/Special Judge. The advocate represented the accused in three of such transferred cases. He filed a Writ Petition in the High Court praying that the transfer order be quashed. The Writ Petition was dismissed by the High Court holding that the petitioner being an advocate, has no locus standi to challenge the legality of the said order by way of a Writ Petition. The ratio laid down in para 2 of this decision is well known and well settled, but its applicability to the given facts and circumstances is what is relevant. Before us is a petitioner who, not just as an advocate, but as a complainant, alleged that a certificate of registration issued in favour of the 3rd respondent deserves to be cancelled. Section 10 of the Trade Unions Act, 1926 reads thus:

"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; (c) if the Registrar is satisfied that a registered Trade Union of workmen ceases to have the requisite number of members: 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."

20. A perusal of this provision would indicate that a certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar. It can be done on an application of the Trade Union and which application would have to be verified in such manner as may be prescribed by the Rules, or 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 the provisions of the said Act, or has rescinded any rule and in the manner set out by clause (b) of Section 10. Section 10 enables cancellation of registration on the satisfaction of the Registrar as set out in clause "c" as well.

21. It is not the argument of Mr. Nerlekar that in the scheme of Section 10, no complaint or application of the nature made by the petitioner-complainant can be entertained or is maintainable. The argument is that the petitioner personally has no vested or legal right to question the registration.

22. The reliance placed by Mr. Nerlekar on the other judgment of the Supreme Court in the case of Anand Sharadchandra Oka (supra) is equally misplaced. There, the respondent University issued a notification calling for applications from registered graduates in the prescribed form for getting their names registered in the electoral roll for electing ten members in the Senate of the University. The petitioner, holding a LL.M. degree, applied for registration of his name in the said roll. He was holding a LL.M. degree from the University of Mumbai. However, the University addressed a letter to him, calling upon him to submit his Bachelor's degree certificate obtained from the University of Mumbai. The argument of the petitioner was that, once he has obtained a Master's degree or Doctoral degree from the University of Mumbai, his name can be included in the electoral roll. He cannot be denied registration only on the ground that he

had not obtained graduate degree from the said University. The petitioner, even after the election, pursued his challenge to the requirement that he must be a graduate from the University of Mumbai. In the 2nd Writ Petition, it was argued inter alia that the petitioner was not an aggrieved party. Upholding that objection, the Petition was dismissed. The argument having been upheld and the Petition being dismissed, the petitioner approached the Hon''ble Supreme Court of India. It is in that context the observations were made in paragraph nos. 11 and 12 of judgment of the Hon''ble Supreme Court and heavily relied upon by Mr. Nerlekar. Once again, we must not forget the background facts and circumstances in which such observations were made by the Hon''ble Supreme Court. The Rule or the requirement having not been questioned, the litigation being not in the nature of Public Interest Litigation, that the locus of the petitioner was questioned and the objection in that regard was upheld.

23. Such is not the position obtaining from the record before us. The petitioner made a complaint by pointing out that a certificate of registration obtained by the 3rd respondent-Federation was under an obvious mistake. If the Federation is not trying to correct that mistake or the Registrar himself has failed to act and to correct such mistake, the petitioner approached with a complaint or an application in writing in that behalf. That complaint or application of the petitioner was not being disposed of by the statutory authority. The inaction of the statutory authority led to the petitioner filing a Writ Petition in this Court and succeeding in obtaining a direction to that authority for disposal of his complaint in accordance with law. It is thereupon that the impugned order has been passed. If such an order is vitiated, according to the petitioner, in law, we cannot dismiss this Writ Petition now, at this belated stage, on the ground of his locus. If he had a locus or could have maintained the application or complaint seeking to challenge the registration by alleging that it was granted by a mistake of law, then, we do not see how, when he is aggrieved by a order of dismissal of his complaint, he can be prevented from approaching this Court in its writ jurisdiction. Admittedly, his objection was of the above nature and which has been turned down on merits. We can certainly, therefore, entertain this Petition.

24. We also do not find any substance in the technical objection to the maintainability of this Petition on the ground that there is an alternate remedy. The wording of Section 11 is clear. If the certificate was cancelled or registration was revoked, that aggrieved person has a right to appeal. The petitioner was not making a prayer of that nature, but was seeking a cancellation of registration. That prayer has been rejected. Obviously, he has no remedy under the said Act to challenge such an order. Hence, the argument on the point of alternate remedy has also no substance.

25. Equally untenable in law is the argument that the necessary parties are not impleaded. The necessary parties to this Petition are the State, functionary under the said Act and the 3 rd respondent which is a Federation of the member associations of Labour Law Practitioners operating at District Level. That such

individual member associations are not impleaded as party respondents cannot be, therefore, the objection once the Federation is impleaded. Their individual registrations may be under the said Act, but the Federation is an apex level body and representing, so also taking care, of their interests. Their non-impleadment was neither fatal nor the proceedings become not maintainable on that ground. We reject the third objection as well.

26. Turning to the merits, we find that Section 2 Clause (h) of the Trade Unions Act, 1926 defines a "Trade Union". It reads thus:

"2(h) "Trade Union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions;"

27. Pertinently, the Act is to provide for the registration of Trade Unions, and in certain respects, to define the law relating to registered Trade Unions. Chapter I contains preliminary provisions including the definitions. The definition of the terms or the words "executive", "office bearers", "prescribed", "registered office" are all appearing in the context of the definition of the term "registered Trade Union". That is defined under Clause (e) of Section 2 to mean a Trade Union registered under this Act. Then, the definition of the term "Registrar" under Section 2 Clause (f) would enable us to hold that if the certificate of registration was granted by the Registrar who is a functionary under the Act and who entertains the applications under Section 5, then, he is equally empowered to cancel it or take cognizance of an application to cancel the registration. The term "Trade dispute" has some bearing on the conclusion that we reach in this case. The term is defined thus : "2(g) "Trade dispute" means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises"

28. A perusal of the above definition means, any dispute between employers and workmen or between workmen and workmen or between employers and employers which is connected with the employment or non-employment or the terms of employment or the conditions of labour, of any person, and workmen means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.

29. This would, in fact, indicate that others seeking registration by making an application under Section 5 have to state, and necessarily in case of a Trade Union of workmen, the names, occupations and addresses of the place of work of the members of the Trade Union making the application. [see Section 5(1)(aa)].

30. Mr. Patel is, therefore, right in urging that before us is a Federation of the

Labour Law Practitioners" Association. Those practicing in Labour Law before the court or tribunal, deciding trade disputes must, therefore, answer the definition of the term as set out in the Act and enabling registration of a "Trade Union". True it is that Trade Union means any combination, whether temporary or permanent, it must be formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions. Contextually, and in the backdrop of the definition of the term "Trade Dispute", this definition of the term "Trade Union" has a bearing, and both the terms, therefore, must receive an interpretation which would subserve the object and purpose of enacting a law such as The Trade Unions Act, 1926.

31. Mr. Nerlekar is unable to point out either from the memorandum of its aims and objects or from other documents of the Federation that the member associations of Labour Law Practitioners at district level are seeking to regulate the relations within the meaning of clause (h) of Section 2 which defines the word "Trade Union". Mr. Nerlekar was unable to point out as to who is the workman and employer, or who is the employer and employer. We do not see how Labour Law Practitioners or those practicing Labour laws by advising both, employers and employees/workmen in relation to "Trade Disputes" or disputes between them inter se function in an industry or are in employment in any trade as such. The primary purpose, therefore, of forming an association like a Trade Union and seeking to regulate the relations, is hopelessly lacking in this case. The registration that the Federation and its members have obtained as societies under the Societies Registration Act, 1860 is intact and untouched. Such an association, given its memorandum of aims and objects, enlisting its duties, functions and obligations, would enable it to take up the causes of the individual member Association operating at the District level.

32. The practitioners at the district level represent and espouse their cause through their District level Association at the District level and through the Federation of such Associations at a Higher (State) level. None, therefore, is taking away that registration or right guaranteed by virtue of such registration. They can approach all forums so as to give voice to their grievance and complaints and even agitate in that regard. The question is, if they obtain registration as a Trade Union, then, they must satisfy the statutory definition and the test laid down by the Trade Unions Act, 1926. If they cannot be a Trade Union, then, their registration must be cancelled.

33. We see much substance in the contention of Mr. Patel for we do not see any trade or business, we do not see any industry and we do not see any relationship of employer and employer or workmen and workmen. The district level associations as members of the 3rd respondent, therefore, are not employees, nor is the Federation their employer. There could be persons who would be employed by the member district level associations, but their relationship and

qua such district level associations or the relationship of the staff and employees of the Federation qua the Federation are not relevant for the purpose of the present Petition or the dispute involved therein. It is the status of the Federation or the apex level body which is under consideration.

34. If it could not have made an application under Chapter II for registration as a Trade Union, having failed to answer the pre- requisites or pre-conditions, then, its registration as a Trade Union deserves to be cancelled. The provisions enabling seeking registration ought to be read together and harmoniously. They commence by Section 4 which prescribes the mode of resistration. Then comes Section 5 which sets out the contents of an application for registration. Section 6 prescribes the provisions to be contained in the rules of a Trade Union. That would enable us to conclude that a Trade Union shall not be entitled to registration under this Act, unless the executive thereof is constituted in accordance with the provisions of this Act, and the rules thereof provide for the matters set out in Section 6. Apart from these matters, there is a power conferred in the Registrar vide Section 7 to call for further particulars and to require alteration of name. Section 8 provides for registration, but such registgration follows the satisfaction of the Registrar that the Trade Union has complied with all the requirements of this Act in regard to registration, and only then the Registrar can register it as such. If it does not qualify for registration as a Trade Union, when it fails to answer the test required to be satisfied and for being termed as a Trade Union, then, obviously the registration obtained by mistake deserves to be cancelled.

35. We do not see how, therefore, the 3rd respondent Federation could have been conceived and viewed as a Trade Union so as to confer upon it the right and impose upon it the liabilities of a registered Trade Union and allow it to settle the disputes under Chapter III of the Trade Unions Act, 1926. Mr. Patel is, therefore, right in contending that once the Regulations prescribed by Chapter IV Section 29 and 30 also envisage that there is a discretion in the Government to make Regulations for the purpose of carrying into effect the provisions of this Act, then, such of the Regulations, forms and other parts appended thereto cannot be ignored.

36. All of the above has thus been clearly ignored while registering the 3rd respondent Federation as a Trade Union under the Trade Unions Act, 1926.

37. Once we arrive at the above conclusion, then, it is clear that the 2nd respondent has failed to discharge and carry out his duty in accordance with law, and particularly in terms of Section 10. Though the registration was obtained by a mistake, the Registrar failed to cancel it. His failure to perform a statutory duty and for reasons which are wholly unsustainable and untenable, justify our interference in our writ jurisdiction. We accordingly interfere in our writ jurisdiction to quash and set aside the impugned order. The Writ Petition accordingly succeeds. Rule is made absolute in terms of prayer clause (a). All consequences will follow.

38. Needless to clarify that this order does not affect the status, position, power and authority of the 3rd respondent-Federation in terms of its own rules and regulations, as well as its registration as a society under the Societies Registration Act, 1860 or any other similar enactment.

39. At this stage, Mr. Nerlekar seeks a stay of this order. This request is opposed by Mr. Patel. Once we give the above clarification, then, this order and our conclusion does not, in any manner, prejudice or take away any vested right of the 3rd respondent-Federation. Hence, the request of Mr. Nerlekar is refused. In the passing, we may invite the attention of Mr. Nerlekar to a decision of the Hon^{ble} Supreme Court in the case of Ex- Capt. Harish Uppal vs. Union of India & Another, reported in AIR 2003 SC 739.

40. The Labour Law practitioners also include Advocates who are enrolled as Advocates and are governed by the Advocates Act, 1961. As far as their status and right claimed by them to go on a strike is concerned, this issue is dealt with by the Hon^{ble} Supreme Court in paragraphs 44 and 45 (Pages 757 and 758) of the decision in the case of Harish Uppal (supra). We do not, therefore, think that through the Minimum Wages Act, 1948, The Trade Unions Act, 1926 or such enactments, the rights of the above nature can be claimed by a section of the society who are termed as "noble professionals" and are part and parcel of the sovereign function of administration of justice.