(1993) 12 MAD CK 0082

In the Madras High Court

Case No : Writ Petition No. 18078 of 1991

Leather and Leather Goods Democratic Labour Union	APPELLANT
Vs	
First Additional Registrar of Trade Union I (Deputy Commissioner of Labour, Madras)	RESPONDENT

Date of Decision : 14-12-1993

Acts Referred:
Trade Unions Act, 1926 — Section 10, 28, 6, 9

Citation : (1993) 12 MAD CK 0082

Hon'ble Judges : K.S. Bakthavatsalam, J

Bench : Single Bench

Judgement

Bakthavatsalam, J.—The petitioner challenged an order by which the registration under the Trade Unions Act, 1926, has been cancelled for non-submission of annual return under S. 28 of the Trade Unions Act, 1926, and also under Regulation 18 of the regulations under the Trade Unions Act.

2. The facts are not in dispute. The annual return of the petitioner-union for the year 1990 should be filed before the Additional Registrar of Trade Union for the year 1990 should be filed before the Additional Registrar of Trade Unions on or before 30 April 1991, and that the same was not received by the concerned officer. In view of that, a notice was issued by the Additional Registrar of Trade Unions I, Madras. The petitioner-union did not send any reply to the same. As the petitioner did not file the annual return in form "E" on or before 30 April 1991, and also they have not responded to the show cause notice, dated 10 March 1991, the registration of union has been cancelled by the impugned order. This order is challenged before this Court.

3. The petitioner alleges in the affidavit that for the year 1990, they had handed over all the relevant papers regarding annual return to the auditor who prepared the statements for filling a return under form ''X''. It is also alleged in the affidavit that since the auditor has been handing over the returns usually, the petitioner did not give second thought about filing of the annual return. At this

stage, a show cause notice was issued by the respondent herein on 10 May 1991, inform ''D'' and they were asked to show cause why the registration should not be cancelled for the period 1 January 1990, to 31 December 1990, before 30 April 1991, as per S. 28 of the Trade Unions Act, 1926, and Regulation 18 of the Tamil Nadu Trade Unions Regulations, 1927. It is also alleged in the affidavit that they have misplaced the notice and that they were assured by the auditor that the annual return was handed over to the respondent in time, no reply was given to the notice issued under form ''D''. It is also alleged in the affidavit that only when the impugned order is issued, the petitioner union came to know that the annual report was filed before the Additional Registrar of Trade Unions II by the auditors before the prescribed date and as such there is no wilful or deliberate act of omission or commission on the part of petitioner-union contravening any of the provisions of the and that they have complied with S. 28 of the Trade Unions Act and Regulation 18 of the regulations framed under the Trade Unions Act. It is also stated that the chartered accountant came to know that his office people have filed the annual return of the petitioner union for the year 1990 containing two copies of ''E'' forms, office bearers'' list of fully paid members and union''s bye-laws before the Additional Registrar of Trade Unions II and that the offices of the Additional Registrar of Trade Unions I and II are situate in the same floor and as such a mistake has been committed. It is also stated that the auditor by letter, dated 13 November, 1991, addressed to both the Additional Registrars informing them about the filing of returns in the wrong place and also requested them to correct the mistake. It is pointed out in the affidavit that the Additional Registrar of Trade Unions II by letter, dated 16 December 1991, informed the petitioner that he handed over the annual return received from the petitioner-union to the respondent herein, stating that no acknowledgment has been obtained since both offices are situate in the same place. With these allegations, the petitioner-union has come up before this Court.

4. Notice of motion has been ordered by this Court on 20 December, 1991.

5. Learned Government Advocate appeared with instructions. The respondent herein, the I Additional Registrar of Trade Unions I (Deputy Commissioner of Labour,. I) takes a stand that the petitioner has not filed the annual return in time nor submitted a reply to the show cause notice and as such there is a violation of the provisions of Trade Unions Act, 1926. Learned Government Advocate also states that there is no infirmity in the order passed by the respondent. It is also pointed out by the learned Government Advocate that records do not show that the return was received by the respondent from the office of the Additional Registrar of Trade Unions II and that usually transfer of records are made only on proper acknowledgment. As such, it is stated that the impugned order is in accordance with law.

6. Sri S. Kumaraswamy, the learned counsel for the petitioner, is not able to deny the factual position that the return was submitted to the Additional Registrar of Trade Unions II and that no reply was given to the show cause notice issued by

the respondent. Learned counsel for the petitioner, however, contends that the action of the petitioner cannot be said to be wilful since the return has been filed before the Additional Registrar of Trade Unions II and that the Additional Registrar of Trade Unions II has also in formed that he has transferred the return to the Additional Registrar of Trade Unions I. Learned Counsel for the petitioner states that it is a mistake committed by the auditors and that the petitioner-union should not be penalised for the mistake especially when both the offices are situate in the very same building.

7. Learned Government Advocate reiterates the averments made in the instructions and contends that this is a case where there is a clear violation of S. 28 of the Trade Unions Act, 1926, and also the Regulation 18 of the regulations framed under the Act and as such the impugned order cannot be said to be contrary to law. Learned Government Advocate, on instructions, contends that if at all anybody is to be blamed it is only the petitioner-Union and that the impugned order cannot be said to be illegal.

8. I have considered the arguments of the learned counsel for petitioner and of the learned Government Advocate. Section 28 of the Trade Unions Act, 1926, provides for filing of returns which is to the following effect :

"(1) There shall be sent annually to the Registrar, on or before such date as may be prescribed, a general statement, audited in the prescribed manner, of all receipts and expenditure of every registered trade union during the year ending on the 31st day of December next preceding such prescribed date, and of the assets and liabilities of the trade union existing on such 31st day of December. The statement shall be prepared in such form and shall comprise such particulars as may be prescribed.

(2) Together with the general statement there shall be sent to the Registrar a statement showing all changes of the office bearers made by the trade union during the year to which the general statement refers, together also with a copy of the rules of the trade union corrected upto the date of the despatch thereof to the Registrar.

(3) A copy of every alteration made in the rules of a registered trade union shall be sent to the Registrar within fifteen days of the making of the alteration.

(4) For the purpose of examining the documents referred to in Sub-secs. (1), (2) and (3), the Registrar, or any officer authorised by him, by general or special order, may at all reasonable times inspect the certificate of registration, account books, registers, and other documents relating to a trade union, at its registered office or may require their production at such place shall be at a distance of more than ten miles from the registered office of trade union..."

Regulation 18 of the regulations framed under the Trade Unions Act speaks that the annual return to be furnished under S. 28 shall be submitted to the Registrar on or before 30th day of April, every year and it is to the following effect :

"The annual return to be furnished under S. 28, shall be submitted to the Registrar in duplicate in form ''G'' on or before the 30th day of April in each year, Every trade union shall also submit such other particulars or information that maybe required by the Registrar in connection with the annual return and relating to matters affecting the byelaws....."

Section 9 of the Trade Unions Act, 1926, empowers the Registrar to Issue a certificate of registration in the prescribed form. Section 10 of the Act empowers the Registrar to cancel or withdraw the registration and Sub-cl. (b) of S. 10 reads as follows :-

"... Cancellation of registration : A certificate of registration of a trade union may be withdrawn or cancelled by the Registrar.

(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 of or has wilfully and after notice from the Registrar contravened any provision of this Act or allowed any provision of this Act or allowed any matter provision for which is required by S. 6..."

So to exercise the power to cancel the registration, in my view, there should be an element of wilfulness. In order to be wilful, it must be intentional, deliberate, calculated and consciousness with full knowledge of legal consciousness. On the facts of this case, it is seen that the petitioner-union has submitted the relevant papers to the auditor who filed the papers before a wrong place, i.e. before the Additional Registrar of Trade Unions II. This fact has not been denied by the Additional Registrar of Trade Unions II also and he informed the petitioner that he had passed the entire papers to the respondent herein. So the fact remains, that the annual return of the petitioner-union had been filed before a wrong officer and that officer has passed on all the papers to the officer concerned i.e., the respondent herein. It is also to be seen that the offices are situate on the same floor. It is true that the Additional Registrar of Trade Unions II has not obtained any acknowledgement from the Additional Registrar of Trade Unions I, But so far as the authority, constituted under the Trade Unions Act, 1926, addressed a letter to the petitioner herein stating that he had transferred the annual return of the petitioner-union to the concerned officer. I do not see such an action of the petitioner-union can be taken to be wilful. It cannot be said to be deliberate one. It may be true that the petitioner-union should have answered the form ''D'' notice. The petitioner did not choose to do so. At any rate, since I take the view that the Non-Filing of the return before the respondent herein before the end of April 1991 is not wilful, the impugned order has got to be set aside and accordingly it is set aside. The additional registrar of Trade Unions I (Deputy commissioner of Labour I) Madras, the respondent herein, is directed to take a copy of the annual return of the petitioner-union through their auditors for the purpose of compliance of the provisions of the Trade Unions Act, 1926. With this direction, this writ petition is allowed. No costs.