

(2016) 08 GUJ CK 0011

In the Gujarat High Court

Case No : Special Civil Application No. 61 of 2016

Mukeshbhai Dashrathbhai Chokshi

APPELLANT

Vs

Ramanlal Dahyabhai Patel

RESPONDENT

Date of Decision : 05-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2016) 151 FLR 446

Hon'ble Judges : C.L. Soni, J.

Bench : Single Bench

Advocate : HCLS Committee, Advocate and Mr. N.A. Acharya, Advocates, for the Petitioners No. 1; Mr. A.J. Yagnik, Advocate, for the Respondents No. 1; Mr. D.S. Vasavada, Advocate, for the Respondents Nos. 2 and 3; Ms. Hansa Punani, Asstt Govt Pleader, for the Respond

Final Decision : Dismissed

Judgement

C.L. Soni, J. (Oral)—By the present petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the order dated 2.11.2015 passed by the Industrial Tribunal ("the Tribunal") in Appeal (TU) No. 1 of 2014 whereby the Tribunal set aside the order dated 26.2.2014 of the Deputy Registrar, Trade Unions, cancelling the registration of the Textile Labour Association (Majoor Mahajan Sangh) and directed to hold election of the Union within three months from the date of its order.

2. It appears that the Deputy Registrar, Trade Union had issued notice dated 31.7.2013 to respondent No.1- President of the Union stating that his office has taken serious note as regards non-implementing the orders of his office, of continuing unauthorisedly elected representatives of closed mill, of continuing representatives who were relieved from service of the mill, and of not calling regular meetings of the committee members and if such illegal activities go on, action for cancellation of the registration of the Union shall be required to be taken. By the said notice, respondent No.1 was asked to explain within five days

as to why registration of the Union should not be cancelled. It appears that the respondent Nos. 1 to 3 then provided explanation by their reply dated 25.9.2013. However, again notice dated 27.1.2014 was issued alleging commission of different irregularities by the respondent Nos. 1 to 3 and to explain within seven days as to why registration of the Union should not be cancelled. It was thereafter, the Deputy Registrar passed order dated 26.2.2014 cancelling the registration of the Union. Such order was challenged by respondent Nos.1 to 3-the office bearers of the Union by filing appeal before the Tribunal. The Tribunal allowed the appeal by the impugned order.

3. Learned advocate Mr. Acharya for the petitioner submitted that the Tribunal interfered with the order of the Deputy Registrar on nonexistent ground. Mr. Acharya submitted that the Tribunal committed serious error in holding that before cancellation of the registration, no clear two months" notice was served as required by the provisions of the Trade Unions Act, 1926 ("the Act"). Mr. Acharya submitted that after first notice dated 31.7.2013 calling for explanation to cancel registration of the Union, more than two months time had passed and on being dissatisfied with the explanation provided by the Union, further notice dated 27.1.2014 for various irregularities was also issued to the Union and it was thereafter, on finding that the office bearers of the Union were not functioning as per the constitution of the Union and were indulging into financial irregularities, the order for cancellation of the registration came to be passed. Mr. Acharya submitted that since the above process undertaken by the Registrar was after giving sufficient opportunities by the notices for more than two months" of time, the Tribunal was not justified in holding that there was no clear notice of two months for taking action of cancellation of the registration of the Union. Mr. Acharya submitted that in any case, the Deputy Registrar after hearing the representatives of the Union, having come to the conclusion that the office bearers have been indulging into various kinds of irregularities, committed no error in cancelling the registration of the Union and unless there was any perversity in the finding arrived at by the Deputy Registrar, it was not open to the Tribunal to interfere with the order for cancellation of the registration of the Union.

4. Learned advocate Mr. A.J. Yagnik appearing for respondent No.1 and learned advocate Mr. D.S. Vasavada appearing for respondent Nos.2 and 3 on the other hand submitted that neither at the time of first notice dated 31.7.2013 nor even at the time of second notice dated 27.1.2014, the mandatory provision for giving two months" time to respondent Nos. 1 to 3 to reply to the show cause notice was complied with. They submitted that the provisions of Section 10 of the Act mandate that before taking action for cancellation of the registration of the Union, not less than two months" previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate is required to be given, however, in the present case, the Registrar considered the time passed after first notice dated 31.7.2013 for calculating the time period of two months when notice dated 27.1.2014 was given, which was not permissible. They

submitted that first notice was only of giving five days and second notice was only of giving seven days" time to respondent Nos.1 to 3 to render explanation. They submitted that even otherwise, the irregularities alleged in the notices based on which the order for cancellation of the registration was made would not call for cancellation of the registration under Section 10 of the Act. They submitted that now, as per the order of the Tribunal, the election is already held and new body has started functioning and therefore, this Court may not interfere with the impugned order.

5. The Court having heard learned advocates for the parties and having perused the orders of the Deputy Registrar cancelling the registration of the Union and of the Tribunal allowing the appeal of the respondent Nos.1 to 3 finds that as observed by the Tribunal, before taking harsh action of cancellation of registration of any Union, mandatory provisions of the Act to comply with the principles of natural justice are required to be followed. It could not be disputed that Section 10 of the Act mandatorily requires giving of not less than two months" previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the registration before cancellation of the registration of the Union. The Tribunal has observed that by counting the time period of two months from first notice dated 31.7.2013, order for cancellation of the registration of the Union came to be passed, which was not in compliance of the provisions of the Act. It is not in dispute that in the first notice dated 31.7.2013, only five days" time was given to the President of the Union to explain as to why the registration of the Union should not be cancelled. As observed in the second notice dated 27.1.2014, after receipt of the reply dated 25.9.2013 from the office bearers of the Union in response to first notice, it was decided to postpone taking of any action. But, then, in connection with alleged irregularities, as mentioned in the notice dated 27.1.2014, the respondent Nos. 1 to 3 were called upon to explain within seven days, why the registration of the Union should not be cancelled. In such notice, it is mentioned that after the notice dated 31.7.2013, period of two months was over and there was no satisfactory explanation given by respondent Nos. 1 to 3. It is required to note that the grounds mentioned in the second notice dated 27.1.2014 are differently specified than as mentioned in the first notice. Therefore, by counting the time period passed after the first notice dated 31.7.2013, second notice dated 27.1.2014 could not be construed to be two months" previous notice for taking action of cancelling the registration of the Union. Even apart from this, registration of the Union cannot be cancelled or withdrawn unless requirements mentioned in Section 10 of the Act are satisfied. Mr. Acharya however submitted that one of the requirements mentioned in Section 10(b) of the Act that the Union has rescinded any rule providing for any matter or provision as required by Section 6 could be said to have been satisfied in the present case. The contention cannot be accepted. Section 6 provides for compliance of certain requirements for Trade Union to be entitled to registration under the Act and Section 10 provides that if the Union has rescinded any rule made for matters mentioned in Section 6, such would be

a ground for cancellation of the registration. Mr. Acharya could not point out as to which rule the Union has rescinded so as to invite action under Section 10 of the Act for cancellation of the registration nor even order for cancelling the registration is based on such ground. In such view of the matter, the Court finds that no interference is required in the impugned order of the Tribunal in exercise of the powers under Articles 226 and 227 of the Constitution of India. The petition is therefore, rejected. Notice is discharged.