

(2018) 07 RAJ CK 0190
In the Rajasthan High Court
Case No : Civil Writs No. 3469 of 2017

Rukmudin @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 16-07-2018

Acts Referred:

Trade Union Act, 1926 — Section 9A, 11
Industrial Disputes Act, 1947 — Section 25T, 25U

Citation : (2018) 07 RAJ CK 0190

Hon'ble Judges : Ashok Kumar Gaur, J

Bench : Single Bench

Advocate : Amin Ali, Ashvin Garg, Padam Singh Gurjar

Final Decision : Disposed Off

Judgement

The instant petition has been filed by the petitioner-union for seeking a direction against Additional Registrar of Trade Union and Divisional Labour

Commissioner, Jaipur-respondent No. 2 to issue registration certificate to the petitioner-trade union, forthwith and further prayed for taking action

respondent No. 2 for abusing his authority.

Counsel for the petitioner has submitted that the last application which was submitted for grant of registration under the Trade Union Act, 1926 was

filed by the petitioner-union on 18.11.2016 as per the averment made in para 6 of the writ petition. Learned counsel has submitted that the respondent

No. 2 has been asking for unnecessary informations and by one way or the other, the application has not been decided.

Learned counsel has submitted that the last notice/letter received from the office of the respondent No. 2 was issued on 03.02.2017 wherein on five

issues explanation was sought from the petitioner-union.

Learned counsel has submitted that immediately after receipt of letter dt.03.02.2017, the petitioner-union on 15.02.2017 has submitted its reply with all

the details, as was required by the respondent No. 2. Learned counsel has submitted that in spite of information given as back as on 15.02.2017, no

final view was taken by the respondent No. 2 either to reject the application or to grant registration certificate under the Trade Union Act, 1926.

Learned counsel has submitted that the respondent No. 2 initially had rejected the application filed by the petitioner-union vide communication

dt.02.11.2016 (Annex.-3) and further when the petitioner-union rectified the defect/objections pointed out, the respondent No. 2 issued order

dt.08.11.2016 (Annex.-5) where he refused to register the petitioner-trade union as they did not comply with the requirement of Section 9-A of the

Trade Union Act, 1926.

Learned counsel has submitted that after communication dt.08.11.2016, the petitioner-union has again submitted fresh application dt.18.11.2016 but till

date no decision has been taken by the respondent No. 2 thereon.

Learned counsel has submitted that discretion and power given to respondent No. 2 under the Trade Union, Act 1926 has been misused by him as

there is no statutory limit to take a decision on the application submitted by union for registration.

Learned counsel has submitted that discretion vested in the respondent No. 2 is not unfettered and he cannot be allowed to raise objection for the sake

of raising objection. Learned counsel has further submitted that due to non-registration of the petitioner-trade union, as many as 39 workers have been

removed from the job and there is every likelihood that in future some more workers would be removed by the respondent-employer. Learned

counsel has further pointed out that though the application was filed before the Labour Commissioner for alleging violation of Section 25-T and 25-U

of the Industrial Disputes Act, 1947 however, the same was not entertained by the Labour Court.

Learned counsel has submitted that separate proceedings have been contemplated against the rejection of the application filed under Sections 25-T

and 25-U of the Industrial Disputes Act, 1947.

Learned counsel appearing on behalf of respondent/State Nos. 1 & 2 submits that the petitioner-union has not fulfilled the requirement under the

provisions of Trade Union Act, 1926 for having its proper registration and as such the Additional Registrar of Trade Union and Divisional Joint Labour

Commissioner has informed the petitioner-union to rectify the short-comings communicated from time to time. Learned counsel has submitted that due

to non supply of requisite information, the respondent No. 2 was not in a position to take a final decision on the application submitted on 18.11.2016.

Learned counsel has further submitted that there has been change of officer as the Additional Registrar of Trade Union and Divisional Joint Labour

Commissioner and as such proper decision could not be taken.

Learned counsel for respondent No. 3-employer has submitted that the present writ petition may not be entertained as the application filed by the

petitioner-union has already been rejected by the competent authority and the petitioner-Union has failed to challenge the said order before the

Appellate Authority.

Learned counsel has further submitted that if the petitionerunion does not furnish proper information and does not cure the defects, no liability can be

fastened on respondent No. 2 that he is not performing his job properly.

I have heard the learned counsel for the parties and perused the material available on record.

This Court finds that admittedly application for registration has been filed afresh by the petitioner-union on 18.11.2016 and the respondent No. 2 had

issued letter dt.03.02.2017 (Annex.-10) asking clarification on five issues. This Court further finds that the petitioner-union has submitted its

explanation vide reply dt.15.02.2017. The petitioner-union has not received any communication after issuance of letter dt.03.02.2017. This Court finds

that the application for registration of a Trade Union is required to be decided by the registering Authority as per the provisions of the Trade Union Act,

1926. The refusal of registration has to be challenged by the party-union concerned by way of filing appeal under Section 11 of the Act.

This Court finds that the respondent No. 2 has to take a final decision in respect of registration or refuse to register the petitioner-Union's

application as Trade Union. The period of more than one year and five months have passed as the last notice was issued on 03.02.2017 and no

decision so far is taken by the Registering Authority. This Court does not approve the said practice adopted by the respondent No. 2. This Court finds

that if the objections which are raised by the Registering Authority, are not satisfied by any Trade Union in spite of notice being given, final view has to

be taken by the said registering authority who has received the application for registration of the Trade Union.

The Court after considering the entire case, deems it proper to direct the respondent No. 2 to take a final view in respect of registration of the

petitioner-union. The Registrar if still wants to call for further information, he is given two weeks time to receive such information from the petitioner-

union. The petitioner-union is further directed to file reply or specific objections which is to be raised by the Registering Authority within a further

period of two weeks and thereafter Registering Authority is directed to take a final view in respect of the registration of petitioner-union within a period

of two weeks. The entire exercise is to be complied with within a period of six weeks from the date of receipt of copy of this order.

It goes without saying that the petitioner-union is at liberty to avail remedy under the law, in case, there is refusal by the Registering Authority to

register the as Trade Union.

The writ petition is accordingly disposed of in terms of the above observations.