

GAHC010040842024



2024:GAU-AS:12307

**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : CRP(IO)/83/2024

CHEMISTS AND DRUGGISTS ASSOCIATION OF ASSAM
A TRADE UNION FORMERLY REGISTERED UNDER THE TRADE UNIONS
ACT, 1929 HAVING ITS REGISTERED OFFICE AT BANINAGAR, REHABARI,
GUWAHATI IN THE DISTRICT OF KAMRUP(M), ASSAM, PIN- 781008
REPRESENTED BY ITS SECRETARY SRI JITU BARMAN.

VERSUS

THE LABOUR COMMISSIONER CUM REGISTRAR OF TRADE UNIONS
ASSAM
SHRAM BHAWAN, ULUBARI, GHY-781007, DIST. KAMRUP(M), ASSAM

Advocate for the Petitioner : MR. B D DEKA, MR. M DAS, N CHAUDHURY, MR A BHATRA, MR A DEKA

Advocate for the Respondent : MR B P SARMAH, MR D DAS, MR. P HAZARIKA, MR S CHAKRABORTY

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 04.12.2024

Heard Mr. B. D. Deka, learned counsel for the petitioner. Also heard Mr. S. Chakraborty, learned counsel for the respondent.

2. By filing this application under Article 227 of the Constitution of India, the petitioner has challenged the order dated 21/02/2024 passed by the learned Labour Court at Guwahati in Misc Case No. 3/ 2023 arising out of Misc Appeal No. 1/2023 whereby the prayer of the petitioner was rejected pertaining to framing issues and adducing of evidence.

3. The background of the case is that the petitioner is a trade union comprising of the distributors, retailers and wholesalers of medicines across the various districts of Assam. After observing all requisite formalities, the respondent had issued a certificate of registration vide registration No. 2818 dated 25/06/2019. Subsequently, the said registration of the petitioner/ appellant was cancelled vide order dated 30/08/2023 on the grounds namely (a) at the time of registration the petitioner/ appellant had concealed the fact that they had also applied for registration under the Societies Registration Act, 1860 by way of annexing a separate resolution; (b) the objectives of the appellant/association does not indicate the intention to resolve "trade disputes" and as such there was no trade union activity; (c) the organisation was affiliated to the All India Organization of Chemist and Druggist, which is a registered society; (d) the clauses of the Memorandum of Association of the appellant union provides for membership only of chemist and drug dealers and not workman as defined under the Act. The said order was passed u/s 10 of Trade Unions Act, 1926, (herein after referred as the Act).

4. Being aggrieved by the said order of cancellation of registration, the petitioner preferred an appeal u/s 11 of the Act vide Misc Appeal No. 01/2023. Along with the appeal, the petitioner preferred an application

being Misc Case No. 01/2023 praying for stay of the order dated 30/08/2023, restraining the respondent from taking any steps in furtherance of the said order. The learned Labour Court vide its order dated 07/09/2023 passed an ad-interim order of stay.

5. The respondent side entered appearance in the said proceedings and filed their objection by stating that the petitioner had manipulated documents while applying for registration, more particularly minutes of a meeting dated 12/08/2018 of the petitioner resolving to form a trade union. It was further alleged that the petitioner had suppressed the fact that it had previously made an application for registration as a society by enclosing a separate minutes of the same date held at a separate venue containing the same attendance sheet.

6. As the factual controversies raised in the reply of the respondent, the petitioner moved an application urging the labour court to frame definite issues and allow the parties to lead evidence. The said application was registered as Misc case No. 03/2023. The respondent filed their written objection opposing the said prayer. After hearing both sides, the learned labour court dismissed the said Misc Case vide impugned order dated 21/02/2024. Hence, this revision.

7. It was urged by the learned counsel for the petitioner that though the petitioner initially applied for registration under the Societies Registration Act, but the said application had been withdrawn before being granted registration. Moreover, the factum of applying registration under the Societies Registration Act was not a ground to cancel the registration

under the Act. There is no legal bar for a trade union to be affiliated to a registered society such as All India Organisation of Chemist and Druggist. It is also added that the definition of "trade union" shows that it can be a combination of "employers and employers" and as such the petitioner is a trade union as per the described norms.

8. Learned counsel for the petitioner has contended that the learned labour court failed to appreciate the true purport of Section 11(3) of the Act, which though not mandatory, but permits a trial involving evidence akin to a suit in an appropriate case.

9. It is also the submission of the learned counsel for the petitioner that the learned labour court had overlooked the fact that the moot issue involved in the proceeding was whether there has been manipulation of documents resulting fraud requiring determination of facts and as such adducing of evidence is very much essential. According to learned counsel for the petitioner, the learned Labour court committed grave error of law in deciding an issue of fact in an interlocutory application, that too, in absence of the evidence, which is liable to be set aside.

In support of his submission, learned counsel has placed reliance on the following case laws –

- a. (2021) 0 Supreme Gujarat 49 (Rashtriya Labour Union vs. State of Gujarat)
- b. (2013) 0 Supreme Bombay 2339 (National Aviators Guild being a Trade Union) vs. The Register of the Trade Union Kamgar

Bhawan and others.

c. (2018) 10 SCC 569 (Kavita vs. State of Uttar Pradesh and others)

d. (2004) 4 SCC 311 (Mardia Chemicals Ltd and others vs. Union of India and others)

10. In response, learned counsel for the respondent has argued that the core issue involved in the instant case is that the registration of the association was cancelled as it was obtained by fraud by manipulating records. In the instant case, the materials available in the record makes it crystal clear that the association had resolved to form a society in a meeting held on 12/08/2018 and applied for its registration before the Registrar of Firms and Societies under the Societies Registration Act, 1860. During pendency of that application, another application was filed before the respondent enclosing a resolution of a meeting also held on the same day i.e. 12/08/2018 whereby it was resolved to form a Trade Union. Based on that resolution, registration of the petitioner was allowed. Subsequently, the fraud came to light when one member of the petitioner placed materials on record that the meeting was actually held on 12/08/2018 to form a society and register under the Societies Registration Act. It is also submitted that the petitioner in order to obtain registration under the Trade Union Act had changed the resolution of the meeting dated 12/08/2018 by maintaining the signature sheets of the original meeting dated 12/08/2018 resolving to form a society.

11. According to learned counsel for the respondent, the petitioner could

not rebut the allegation by producing cogent materials which include the original minutes of both the meetings with original signature sheets of the members attending both the meetings, which are not available with the petitioner and as such no oral evidence can substitute the documentary evidence. As the entire matter is based on documents for which oral evidence is not at all required.

12. Learned counsel for the respondent has further submitted that Section 11 of the Trade Union Act is clear that the Appellate Court is not mandatorily required to follow the procedure of a suit to decide the appeal although it has the powers of a Civil Court trying a suit. The citations submitted by the petitioner do not lay down the proposition of law that the Labour Court exercising the powers of Appellate Court under section 11 of the Trade Union Act shall have to record evidence in all appeals to decide the issues involved in the appeal. Those cases were decided on different facts and circumstances and not similar to the present case and as such it cannot be said to be an authority laying any ratio having any binding effect.

13. It is also submitted that a reading of paragraph 27 of the Judgment rendered by the Bombay High Court in National Aviators Guild (*supra*), has explained the role of an Appellate Court exercising powers under Section 11 of the Act by mentioning that –

“27. The Tribunal, as appellate authority was required to focus upon the five grounds contained in Registrar’s cancellation order dated 11th November 2009 and determine whether such grounds stand the scrutiny of facts and the law. The Tribunal, apart from enumerating the five grounds in paragraph 2 of its order, has failed

to determine the validity thereof, which is precisely the exercise expected of an appellate authority."

Learned counsel for the respondent has also referred some other case laws-

- a. (1998) 1 Supreme Court Cases 633 (S. J. Ebenezer vs. Velayudhan and others)
- b. (2001) 0 Supreme (SC) 1536 (Roshan Deen vs. Preeti Lal)
- c. (2001) 0 Supreme (SC) 1270 (M/s Estralla Rubber vs. Dass Estate (P) Ltd)

In view of his submission, the learned counsel for the respondent has prayed for dismissal of the revision petition.

14. Having heard the learned counsel for the parties, the moot question to be decided as the allegation against the petitioner is that the registration certificate was obtained by the petitioner on fraud and manipulating of documents and the original documents of the Board meetings dated 12/08/2018 are not available with the petitioner as such to prove the facts in issue whether adducing of evidence is required.

15. Before considering the rival submission, let us turn to the relevant statutory provisions of the Act to decide the issues involved herein.

S.4. Mode of Registration - (1) Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to

registration, apply for registration of the Trade Union under this Act.

(2) Where an application has been made under sub-section (1) for the registration of a Trade Union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the Trade Union or have given notice in writing to the Registrar dissociating themselves from the application.

S.6 Provisions to be contained in the rules of a Trade Union - 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 following matters, namely-

- (a) the name of the Trade Union;
- (b) the whole of the objects for which the Trade union has been established;
- (c) the whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;
- (d) the maintenance of a list of the members of the Trade Union and adequate facilities for the inspection thereof by the office-bearers and members of Trade Union;
- (e) the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of

honorary or temporary members as office-bearers required under Section 22 to form the executive of the Trade Union;

(ee) the payment of a minimum subscription by members of the Trade Union which shall not be less than-

(i) one rupee per annum for rural workers;

(ii) three rupees per annum for workers in other unorganised sectors;

(iii) twelve rupees per annum for workers in any other case;

(f) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members;

(g) the manner in which the rules shall be amended, varied or rescinded;

(h) the manner in which the members of the executive and the other office-bearers of the Trade Union shall be elected and removed;

(hh) the duration of period being not more than three years, for which the members of the executive and other office-bearers of the Trade Union shall be elected;

(i) the safe custody of the funds of the Trade Union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office-bearers and members of the Trade Union; and

(j) the manner in which the Trade Union may be dissolved.

S.10 Cancellation of registration - A certificate of registration of a 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;
- (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.

16. As per Section 10 of the Act, the Certificate of Registration of a Trade Union may be withdrawn or cancelled by the Registrar of Trade Union either on application of a Trade Union inviting the attention of the Registrar of Trade Unions or the Registrar may *suo moto* take cognizance under the said section. There is no mention in the said provision about cancellation of Registration of Trade Union on application by any other person. The said section permits the authority to cancel the registration of the trade union if, it is obtained by fraud or mistake, but does not permit the Authority to cancel the certificate of registration if, the same is granted by mistake due to incorrect assessment or non-application of mind or mechanical act on the part of the authority.

17. Even for the sake of argument, it is accepted that the mistake is on the part of the Trade Union and in the opinion of the Registrar of Trade Unions in exercise of his powers under Section 10 of the Act, cancels the Certification of Registration of the Trade Union, then it must be preceded by an enquiry, followed by show cause notice, disclosing grounds for initiating action so that the same can be answered by the noticee Union effectively.

18. Section 10(a) needs to be read along with Section 10(b), which speaks about the satisfaction of the Registrar about validity of the Certificate. When Registrar forms an opinion to exercise suo motu powers, it must be preceded by an enquiry, may be preliminary in nature. He has to record *prima facie* reasons for his satisfaction before initiating action of cancellation of registration of the Union followed by show cause notice disclosing grounds for actions so that the same can be effectively answered by the noticee Union.

19. While dealing with the issue of cancellation of registration, it is necessary to consider the effect of Sections 4, 5 and 6 of the Trade Unions Act, 1926. Section 4 deals with the mode of the registration. Section 5 is in respect of the application for registration, which prescribes that every application of the registration of the Trade Union shall be accompanied by a copy of the rules of the Trade Union and the statement of the particulars, namely;

- (a) Name, occupation, address of the members making application;
- (b) Names and addresses of the Trade Union and its Head Office and;
- (c) Details of the office bearers of the Trade Union.

Section 6 provides for provisions relating to the constitution of the executive thereof and the rules providing for the details specified as per (a) to (j) thereof. Thus, it is necessary for the applicant Trade Union to give all these details including the purpose or object of the Trade Union.

20. Registrar was while considering application for registration is expected not to act mechanically or like a stamp machine. Registrar can refuse to grant Registration Certificate, if information is found to be not as per the legal requirements. As per Section 10, the act of mistake is attributable to the Trade Union applying for registration and not to the Registrar, who is an authority to register the Trade Union. It mandates that there should be a fraud or mistake in the information given or facts presented or details furnished by the applicant Trade Union.

21. Granting Registration Certificate is the decision of the Registrar. The official act done in official capacity is presumed to be legal and valid. The said act cannot again be nullified by the second decision of the Registrar, who has no power of review under the Act. Legislative wisdom has specifically excluded an act of mistake by the Registrar and power to review. Registration cannot be cancelled by the Registrar in exercise of power under Section 10 of the Act.

Thus, only the act of obtaining the Registration Certificate by fraud or mistake, that too, by the person applying for registration, could only be a reason or ground for cancellation of registration of the Trade Union under Section 10 of the Act.

22. What is included within the purview of Section 10 is the only act of mistake or fraud committed by the Trade Union applying for registration.

23. The act of granting Registration Certificate by mistake may occur due to incorrect assessment or non-application of mind or mechanical act on the part of the Registrar but such act cannot be rectified by Section 10. It can only be rectified either by the appellate authority or writ court as the circumstances may demand.

24. The fraud or mistake referred to under Section 10 of the Act is required to be established or proved as any other fact. The factum of fraud or mistake is essentially a question of fact which needs to be established by leading positive evidence. If Trade Union obtains Certificate either by mistake or fraud and if it is proved by the cogent and reliable Evidence, then such Certificate can alone be a subject matter of cancellation under Section 10 of the Act. In other words, any mistake in granting Registration Certificate by the Registrar is not within the ambit of Section 10 of the Act as stated hereinabove.

25. In the case of ***Mihir Kumar Guha vs. Registrar of Trade Unions West Bengal, reported in (1960) 0 Supreme (Cal) 117***, it was held that-

“....the powers of the appellate court u/s 11(3) of the Act are analogous to the powers which are exercised by a Judge trying a suit and these powers include the power to summon witnesses, compel production of documents of making orders for discovery and inspection, directing interrogatories and so on...”

26. Coming to the question of power of this court under Article 227 of the Constitution of India, the law is well settled that the powers of superintendence vested in the High Courts under Article 227 are not

confined to administrative superintendence but include the power of judicial review also.

27. The supervisory jurisdiction under Article 227 is exercised for keeping the subordinate Courts and Tribunals within the bounds of their jurisdiction. When a subordinate Court or Tribunal assumes jurisdiction which it does not have or fails to exercise jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and leads to failure of justice, or grave injustice has occasioned thereby, then the High Court must step into exercise its supervisory jurisdiction. The High Court cannot convert itself into a Court of appeal and start re-appreciating the evidence but can only interfere when there is an error of jurisdiction. The powers under Article 227 are very wide and can be used to secure the ends of justice and to ensure that people have faith in the judicial system. However, this power must be exercised sparingly to keep the subordinate Courts and Tribunals within the bounds of their authority and not to correct mere errors committed by them. With regard to the inferior tribunals, it has been held in a number of cases that the High Court can quash or set-aside the decision of an inferior tribunal in case the order has been passed without jurisdiction or is against the principles of natural justice or the Tribunal fails to exercise jurisdiction vested in it by law. Though every error is not to be corrected but if there is dereliction of duty or flagrant violation of law then the High Court must exercise its jurisdiction. Therefore, when a Tribunal does not exercise jurisdiction or acts in a manner which will sully the image of the judicial process or gives findings which are perverse, then the High Court can and must exercise its powers of superintendence.

28. Learned counsel for the respondent has raised objection with regard to the maintainability of the Civil Revision Petition. He had submitted that the Civil Revision Petition, filed by the petitioner, cannot be maintained before this Court, under Article 227 of the Constitution of India. The supervisory jurisdiction of this Court, under Article 227 of the Constitution of India, can be invoked only when there is want of jurisdiction, serious errors of law, perverse findings, or gross violation of natural justice. The order passed by the Labour Court is quite reasonable and justified. Therefore, learned counsel for the respondent prays that the Civil Revision Petition is liable to be dismissed.

29. In the case of **L. Chandra Kumar vs. Union of India and Others, reported in (1997) 0 Supreme (Bom) 138**, it was observed that -

“.....the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. It is further held and observed by the Hon'ble Supreme Court that in respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 of the Constitution of India cannot wholly be excluded. In the case before the Hon'ble Supreme Court, the Hon'ble Supreme Court was considering the exclusion of the writ jurisdiction under Articles 226 and 227 of the Constitution of India against the decision of the Tribunals and direct appeals were provided from the decisions of all Tribunals to the Hon'ble Supreme Court under Article 136 of the Constitution of India. To that, the Hon'ble Supreme Court observed that the decisions of the Tribunals are amenable to the

supervisory jurisdiction of the High Courts under Articles 226/227 of the Constitution of India and it observed and held that the aggrieved party will be entitled to move the High Court under Articles 226/227 of the Constitution of India.”

30. In the case of ***State of Gujarat Etc. vs. Vakhatsinghji Vajesinghji Vaghela (Dead) By His Legal Representatives And Others Etc.*** reported in ***(1968) 0 Supreme (SC) 105***, it was held that-

“.....Section 12 of the Abolition Act makes the decision of the Tribunal final and conclusive and therefore the High Court has no jurisdiction to interfere with the said decision. Not accepting the said contention, the Hon'ble Supreme Court has observed and held that Article 227 of the Constitution gives the High Court the power of superintendence over all courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. The jurisdiction cannot be limited or fettered by any Act of the State Legislature. It is further observed that the supervisory jurisdiction extends to keeping the subordinate Tribunals within the limits of their authority and to seeing that they obey the law....”

31. In view of the aforesaid legal proposition, this Court is of the view that the power vested in the High Courts to exercise judicial superintendence over the decisions of the courts and tribunals within their respective jurisdiction is part of the basic structure of the Constitution and no legislature can take away such power of superintendence conferred under Article 227 of the Constitution of India. As I have already stated that the factum of fraud or mistake is essentially a question of fact which needs to be established by leading positive evidence, thus when a tribunal does

not exercise jurisdiction or acts in a manner which appears to be against the principles of natural justice, then the High Court can exercise its power of superintendence. Hence, there is no bar to interfere with the order of the Labour Court dated 21/02/2024, while rejecting the prayer of the petitioner to adduce evidence in the case.

32. In view of the above discussion and the law laid down on the issue by the different courts, this Court is of the opinion that the order dated 21/02/2024 passed by the Labour Court, Guwahati deserves to be set aside and accordingly the order dated 21/02/2024 is set aside. The petitioner is at liberty to adduce evidence in accordance with law.

33. In the result, the Revision Petition is allowed and disposed of accordingly.

JUDGE

Comparing Assistant