

THE HON'BLE SMT JUSTICE V. SUJATHA

Writ Petition No.5713 of 2023

ORDER:

The present writ petition came to be filed under Article 226 of the Constitution of India seeking the following relief:

“....to issue a Writ order or directions more particularly one in the nature of Writ of Mandamus declaring the inaction on the part of the 4th respondent herein in not considering the representations submitted on behalf of the petitioner company last being representation dated 13.02.2023, is arbitrary, illegal and in violation of well settled principles of natural justice....”

2. The case of the petitioner is that, the petitioner is a company having been registered under the Companies Act, 2013, manufacturing various ferrous alloy products by duly engaging number of employees on regular basis as well as contract basis. The 6th respondent herein was appointed as a Trainee Operator in the year 1989 and after completion of training, he was continued as a Crane Operator till the date of dismissal from his service on the ground of serious misdemeanors while working as a crane operator.

3. Initially, the 6th respondent made an application to the 4th respondent to register the 5th respondent as Trade Union, but, the application was rejected on the ground that the certificate produced by them showing the strength of the Union is less than 10% of the entire strength.

4. Thereafter the 6th respondent has resubmitted the application by showing names of the contract labour supplied by the service provider who were not in the rolls of the petitioner company and obtained the registration. As per which, it is clear that the 6th respondent obtained registration by playing fraud on the competent authority i.e. the 4th respondent. After the said registration of the 5th respondent Trade Union, the 6th respondent while playing the role of a General Secretary has created problems by raising frivolous litigations and made the petitioner company to close entire industry for a period of three years. As soon as the petitioner company noticed the registration of the 5th respondent Trade Union, the petitioner company submitted a representation dated 16.12.2013 bringing it to the notice of the 4th respondent, the aforesaid circumstances and requested the 4th respondent to cancel the registration of the 5th respondent Trade Union formed by the 6th respondent. As there was no response from the 4th respondent, the petitioner has made representations on 22.10.2016 and 12.09.2019, but the 4th respondent did not consider to choose the same.

5. The main grievance of the petitioner is that, the 6th respondent being a dismissed employee got the registration of the 5th respondent Trade Union without having minimum percentage

of the employee membership and failed to file returns of the membership and has been creating disputes for achieving his personal objects and tried to close down the industry itself and further stated that the 5th respondent is involved in various criminal cases. As there was no response, the petitioner company has filed a latest representation on 30.02.2023 and filed the present writ petition seeking a direction to consider the representation made by the petitioner company.

6. The learned Government Pleader for Labour has filed a copy of the instructions of the Deputy Commissioner of Labour/4th respondent herein dated 04.04.2023 wherein it is admitted that the petitioner has submitted the representations to the 4th respondent on 16.12.2013, 22.10.2016, 12.09.2019 and as well as the latest representation dated 30.02.2023 seeking the cancellation of the registration of the 5th respondent as it was registered without any substantive records or proofs to initiate action on his representations. In order to invoke cancellation or withdrawal of registration under Section 10 of the Trade Union Act, there must be sufficient material before the Registrar that the trade union concerned should have wilfully contravened certain provisions of the Act and Rules.

7. Further, it is stated that there must be some material before the Registrar that the Trade Union should have wilfully contravened the certain provisions of the Act and Rules but in the present case, the 5th respondent Trade Union have been submitting the annual returns in Form-E under the A.P. Trade Union Regulations up to the year ending 2022 and the 5th respondent was also allowed for participating in the union election along with other two Trade Unions of the petitioner company in the year 2017 and secured 47 votes out of 267 total votes.

8. Learned counsel for the 4th respondent has relied upon a judgment in the case of *Saraswat Co-operative Bank Employees Union Vs State of Maharastra* [1996 (74) FLR 1945], wherein, the relevant portion of the order is extracted below:

“2. The learned counsel for the petitioner further submitted that in order to invoke the cancellation of the registration, the Registrar is empowered to cancel the registration under Section 10 of the Trade Unions Act only if there are enough materials to establish that the petitioner commits any wilful act of fraud or commits any contravention of the provisions of the Act etc. We see considerable force in his contention. Section 10 of the Act reads as follows :

"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 :

Provided that not less than two month's 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."

9. As per the instructions furnished by the 4th respondent dated 04.04.2023, it appears that the representations submitted by the petitioner on 16.12.2013, 22.10.2016, 12.09.2019 and the latest representation dated 30.02.2023 could not be considered in order to invoke cancellation or withdrawal of the registration under Section 10 of the Trade Union Act. There must be sufficient material before the Registrar that the Trade Union concerned which is sought to be cancelled should have wilfully contravened the certain provisions of the Act and the Rules. But, however, the representations made by the petitioner are not disposed of by way

of a speaking order so as to give the petitioner an opportunity to produce relevant documents necessary in support of his case.

10. In view of the same, instead of going into merits of this case, this Court feels it appropriate to dispose of this writ petition by directing the 4th respondent to consider the representations made by the petitioner on 16.12.2013, 22.10.2016, 12.09.2019 and the latest representation being dated 30.02.2023 and pass appropriate orders within a period of eight (8) weeks from the date of receipt of copy of this order, in accordance with law.

11. Accordingly, this writ petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, pending, if any, in this Writ Petition shall stand closed.

SMT. JUSTICE V. SUJATHA

17.04.2023
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(Disposed of)

Writ Petition No.5713 of 2023

Date: 17.04.2023

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