

Misc. Appeal No.03 of 2024

Present : Jayashree Banerjee, Chief Judge

Order No.6, dated 23.02.2024:

By order dated 29.01.2024 this Court stayed the impugned order dated 11.12.2023 passed by the Registrar of Trade Unions, West Bengal cancelling the registration of the appellant, in effect the appellant remained a functioning Trade Union. Despite such order the respondent No.2 issued a notice on 08.02.2024 which is quoted in verbatim herein below:

“Notice is hereby given that an election is to be held to determine the question of recognition of the following registered Trade Unions in M/s C.E.S.C Ltd. CESC House, Chowringhee Square, Kolkata-700 001.

In the event of the election being contested the poll will be taken on 01.03.2024 between hours of 7.00 A.M and 4.00 P.M.”

By order dated 13.02.2024 this court entertaining an application under Order 39 Rule 1 and 2 read with Section 94 and 151 of the Code of Civil Procedure directed the respondents to allow the appellant /petitioner to participate in ensuing election process as contemplated under the notice dated 08.02.2024 as a registered Trade Union.

After the said order was served upon the respondents, the respondent no.1, the Registrar of the Trade Union preferred an application before this court challenging the jurisdiction of this Court to entertain the Misc. Appeal. Today the application as had been preferred by the respondent no.1 was fixed for hearing and this court heard both the respondents and the appellant at length on the point of jurisdiction.

It was contended by the Ld. Counsel appearing for the respondent no.1 that by the Trade Unions (Amendment) Act, 2001 there has been an amendment of Section 11 which is quoted herein below:

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Substitution of new section for Section 11. - For section 11 of the principal Act, the following section shall be substituted:-

11. Appeal. - (1) Any person aggrieved by any refusal of the Registrar under Section 7 to register a Trade Union or by the withdrawal or cancellation of a certificate of registration under section 10 and any Trade Union or any association or organisation of employers or any employer of an industrial establishment aggrieved by any decision of the Registrar under Chapter IIIA of this Act in connection with the grant or cancellation of any certificate directing recognition of a Trade Union as a bargaining agent or a constituent of a joint bargaining council may, within such period as may be prescribed, appeal-

a) Where the head office of the Trade Union or the association or organisation of employers of the industrial establishment is situated in any area within Calcutta as defined in the Calcutta Police Act, 1866 (Ben. Act IV of 1866) to the City Civil Court, or

(b) Where such head

(2) The appellate Court

(a) directing the

(b) setting aside the

(c) directing cancellation

(d) directing the

and the Registrar

(3) For the purpose Code.”

It is the specific contention of the Ld. Counsel for the Respondent that after the said amendment it is the Labour Court or the Industrial Tribunal shall

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have the jurisdiction to entertain an appeal from the order of the Registrar of Trade Union cancelling the registration of a particular Trade Union.

Countering the submissions of the Ld. Counsel for the respondent no.1, Ld. Counsel for the appellant submitted that the Section 11 of the Trade Unions Act, 1926 was amended for the State of West Bengal and ***in substitution*** of the original Section 11 of the Trade Unions Act, 1926 the new Section 11 was made applicable for the State of West Bengal which received assent of the President. The amendment which is now being shown by the Ld. Counsel for respondent no.1 is in respect of Section 11 of the Principal Act which is not applicable in West Bengal. It is the specific contention of the Ld. Counsel for the appellant that the Section 11 of the Principal Act is not in vogue in the State of West Bengal as it has been substituted by the West Bengal Amendment Act and the substituted Section 11 received the assent of the President to be made applicable in West Bengal only. Thus when the original Section 11 is not applicable being substituted by a new Section 11 to be made applicable in the State of West Bengal, any amendment that is brought in, in respect of the Principal Section 11 cannot have any effect in the State of West Bengal. Ld. Counsel also contended that even if the amendment is made applicable in the State of West Bengal nowhere it is stated that the amendment that is brought in, in respect of Section 11 of the Principal Act is in substitution of the amended Section 11, applicable in the State of West Bengal only. Rather if it is to be made applicable in West Bengal the same shall be in addition to the jurisdiction already existed for the State of West Bengal that the previous amendment has brought in.

Ld. Counsel thereafter invited the attention of this court to the notification dated 03.03.2006, which has been heavily relied upon by the Ld. Counsel for the respondents wherein it appears that the Principal Secretary by the order of the Governor has issued a notification which reads as follows:

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“In exercise of the power conferred by clause (aa) of Sub-Section (1) of Section 11 of the Trade Unions Act, 1926, as amended by Section 7 of the Trade Unions (Amendment) Act, 2001, the Governor is pleased hereby to appoint with immediate effect the Judge, of the Industrial Tribunal/Labour Court mentioned in column I of the schedule below, for the district, where the head office of the Trade Union is situated, mentioned in column 2 against such Industrial Tribunal/Labour Court in column 1 for preferring appeal against the order of the Registrar of Trade Unions refusing to register a Trade Union or withdrawing or cancelling certificate of registration of a Trade Union.

Schedule

Column-I

Column-2

<i>Name of the Industrial Tribunals/ Labour Courts.</i>	<i>Name of the District</i>
<i>First Labour Court</i>	
<i>Second Labour Court</i>	<i>- Kolkata</i>
<i>Second Industrial Tribunal at Kolkata</i>	<i>- North 24 Parganas</i>
<i>Fourth Industrial Tribunal at Kolkata</i>	<i>- South 24 Parganas</i>
<i>First Industrial Tribunal at Kolkata</i>	<i>- Howrah</i>
<i>Third Industrial Tribunal at Kolkata</i>	<i>- Hooghly</i>
<i>Fifth Industrial Tribunal at Kolkata</i>	<i>- Purba Midnapur</i>
<i>Seventh Industrial Tribunal at Kolkata</i>	<i>- Paschim Medinipur</i>
<i>Eighth Industrial Tribunal at Kolkata</i>	<i>- Murshidabad</i>
<i>Third Industrial Tribunal at Kolkata</i>	<i>- Nadia</i>

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<i>Sixth Industrial Trinunal at Jalpaiguri</i>	-	<i>Darjeeling</i>
		<i>Jalpaiguri</i>
		<i>Malda</i>
		<i>Uttar Dinajpur</i>
		<i>Dakshin Dinajpur</i>
		<i>Koochbihar</i>
 <i>Ninth Industrial Tribunal at Durgapur</i>	 -	 <i>Burdwan</i>
		<i>Bankura</i>
		<i>Birbhum</i>
		<i>Purulia"</i>

Having invited the attention of this court to the notification as quoted herein above Ld. Counsel for the appellant contended in the very first line it is mentioned that in exercise of the power conferred by Clause (aa) of Sub-Section (1) of Section 11 of the Trade Unions Act. 1926 as amended by Section 7 of the Trade Unions (Amendment) Act, 2001 the notification as referred to by the respondent no.1 has been issued. Ld. Counsel contended there is no such power conferred under Section 1(aa) given to any authority to frame any rule or issue any notification.

For brevity of discussion the Section 7 of the Trade Unions (Amendment) Act, 2001 is quoted herein below:

"7. Amendment of Section 11. - In Section 11 of the Principal Act, in sub-section (1), after clause (a), the following clause shall be inserted, namely:-

(aa) where the head office is situated in an area, falling within the jurisdiction of a Labour Court or an Industrial Tribunal, to that Court or Tribunal,

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as the case may be;”.

Ld. Counsel further contended that the amended Section 11 in respect of the State of West Bengal received the assent of the President which cannot be challenged and/or amended by the Governor alone without receiving the assent of the president. Moreover Article 254 of the Constitution of India states that -

“If any any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the legislature of the State shall, to the extent of the repugnancy, be void.”

Therefore even if the State Legislature brings in any amendment in the Act which is repugnant to the Act enacted by the Parliament the same shall have no force and the act that has been enacted by the Parliament shall have effect.

Thus the jurisdiction of the City Civil Court, Calcutta stays in addition to the jurisdiction of Labour Court and Labour Tribunal if the recent amendment is to be made applicable in West Bengal subject to the assent of President.

Having recorded the submissions of the Ld. Counsel for the respective parties this court finds merit in the submission of the Ld. Counsel for the appellant and is of the opinion that the Trade Unions (Amendment) Act, 2001 cannot be made applicable in the State of West Bengal in view of the fact that

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the amended Section 11 that received the assent of President and was substituted in the State of West Bengal instead of principal Section 11 of the Act. Thus the principal Section 11 substituted by the Trade Unions (Amendment) Act, 2001 has no effect in West Bengal. At best it can be said that the Labour Court or an Industrial Tribunal shall have jurisdiction in addition to the jurisdiction as mentioned in the substituted Section 11 1(a) if made applicable in West Bengal.

Having said thus, this court holds that the City Civil Court, Calcutta has not lost its jurisdiction to entertain an appeal from an order of the Registrar of Trade Union in view of the notification dated 03.03.2006 issued by the Principal Secretary with order of Governor..

Hence, the application filed by the respondent no.1 challenging the jurisdiction of this court is considered and rejected.

The respondent no(s). 1 and 2 are thus directed to comply with the order dated 13.02.2024 forthwith enabling the appellant to participate in the ensuing election to held on 01.03.2024.

To date (29.02.2024) for contested hearing of the stay petition.

Dictated & corrected by me,

Chief Judge.

Chief Judge,
City Civil Court, Calcutta.