

Misc. Appeal No.03 of 2024

Present : Jayashree Banerjee, Chief Judge

Order No.8, dated 29.02.2024:

This an application under Order 39 Rules 1 and 2 read with Sections 94 and 151 of the Code of Civil Procedure praying for an order of injunction restraining the respondent no.1 from acting any further towards the ensuing process of election as is contemplated under the notice dated 08.02.2024 being Annexure-J to the instant petition.

Before I start recording the submissions as are advanced by the Ld. Counsels appearing for the respective parties it is necessary to narrate some previous facts from the record. On 29.01.2024 this court entertaining an application for stay filed in connection with Misc. Appeal no.03 of 2024 passed an ex parte order appreciating the urgency in the matter to the effect that the impugned order dated 11.12.2023 passed by the Registrar of Trade Unions shall remain stayed for a period of two weeks and the respondents were directed to show cause as to why the prayer of the appellant shall not be made absolute pending disposal of the instant appeal within a period of two weeks from the date of receipt of the order to be furnished by the appellant at the office of Respondents in course of the day. The impugned order that was stayed by this court for a period of two weeks is quoted herein below for brevity of discussions;

“A notice in Form ‘E’ under the Trade Unions Act, 1926, as amended,(hereinafter referred to as ‘the said Act’)[Vide Memo No. 773/1(1)/TUR dated 29.08.2023] was served upon Calcutta Electric Supply Permanent Employees’ Union (hereinafter referred to as ‘the said union’)[Registration No. 27197] at its registered address at C/o-Satya Ch. Dutta, 28/A, Tuaf Rd;, P.O.- Bhawanipur, P.S.- Kalighat, Kolkata-700025 on the grounds of submissions of defective Annual returns and also non-compliance with the provision of section 9A of he said Act. Such a notice is required to be given before withdrawal or cancellation of the certificate of registration of the trade union under section 10 of the said Act.

Form- ‘E’ is attached as **Annexure-I**

The said union had received the said notice of cancellation of registration on 2<sup>nd</sup> September, 2023 through speed post vide consignment no. EW427448368 [copy of India Post consignment tracking is attached as **Annexure-II**]. But no reply against the said notice was received from the said union within the specified date i.e. 2<sup>nd</sup> November, 2023. The union, in spite of having received the notice well in advance, no reason was

communicated for non-compliance and also no further opportunity was sought.

The said union had submitted Annual returns last four years i.e. 2019, 2020, 2021 and 2022 through online.

Number of members on books as on 31<sup>st</sup> December 2021 had shown a total of 300 (Male-270 & Female- 30) as found in the column no. 13 as per the Annual Returns of the said union for the year 2021 [Annexure-III] and the number of members of the said union was reduced to zero ( Male-0 and Female-0) ended on 31<sup>st</sup> December, 2022 as revealed in the column no. 13 of the submitted Annual Return by the said union for the year 2022 [Annexure-IV]. As such, the union has been deserted by the members and it attracts Section 9A of the said Act, which is produced below:

**[9A. Minimum requirement about membership of a Trade Union.** – A registered Trade Union of workmen shall at all times continue to have not less than ten per cent. Or one hundred of the workmen, whichever is less, subject to a minimum of seven, engaged or employed in an establishment or industry with which it is connected, as its members.]

It is obvious from the above that the membership of the said union fell below ten percent of the employment in 2022. Therefore, the Union failed to maintain the minimum requirement of membership as per Section 9A of the Trade Unions Act, 1926, as amended and **there is no scope for removal of these incurable defects now or hereafter**. So, the Union is liable to be cancelled in terms of Section 10C of the said Act. A notice of cancellation of the registration of the trade union in Form - 'F' in respect of "Calcutta Electric Supply Permanent Employee's Union" bearing Regn. No. 27197 is issued.

It may be mentioned here that Section 11(aa) of the said Act, as amended, provides for Appeal against cancellation of registration."

Thereafter on 13.02.2024 the appellant again moved another application under Order 39 Rule 1 and 2 read with Sections 94 and 151 of the Code of Civil Procedure stating that despite the order of this court passed on 29.01.2024 and duly served upon the respondents, the

respondent no.1 being the Registrar of Trade Unions issued a notice for election dated 08.02.2024 leaving out the appellant arbitrarily who on the strength of the order passed by this court on 29.01.2024 was also a registered trade union. The appellant/petitioner therefore prayed for a direction upon the respondent no.1 to permit the appellant/petitioner to participate in the ensuing election process as contemplated under the notice dated 08.02.2024 treating the appellant/petitioner as a registered Trade union.

This court after hearing the appellant/petitioner and perusing the documents as were annexed along with said application moved on 13.02.2024 by the appellant passed an order directing the respondent no.1 being the Registrar of the Trade Unions to allow the appellant/petitioner to participate in the ensuing election process as contemplated under the notice dated 08.02.2024 as a registered Trade Union. In the said order passed by this court on 13.02.2024 it was made clear that if the appellant/petitioner was debarred from participating in the ensuing election, this court will take strong action against respondent no.1 for willfully violating this court's order.

After the said order was passed on 13.02.2024 by this court a 'put up' petition was filed on 21.02.2024 by the respondent no.1 by filing an application challenging the jurisdiction of this court to entertain the Misc. Appeal no.03 of 2024. Such application was heard on contest by this court and by order dated 23.02.2024 this court held that City Civil Court, Calcutta had jurisdiction to entertain the appeal as was preferred by the appellant challenging the order passed by the respondent no.1, Registrar of Trade Unions. Even after passing of the said order, it appears that the respondent no.1 did not take any immediate steps to recognize the appellant/petitioner as a registered Trade Union.

It was submitted by the Ld. Counsel for the appellant today before this court that to frustrate the order of this court respondent no.1 issued the symbol only on 27.02.2024 to the appellant that too after all the contesting Trade Unions stopped campaigning for the ensuing election. It is the contention of the Ld. Counsel for the appellant that the appellant did not get any opportunity to campaign for the election though this court passed an order staying respondent no.1's order cancelling the registration of the appellant. Ld. Counsel for the appellant also submitted

that in the meantime a writ petition has been moved before the Hon'ble High Court by another Trade Union praying for Police assistance in all polling booths apprehending disturbances during the polling procedure. Such writ petition was entertained by the Hon'ble High Court and by order dated 28.02.2024 the Hon'ble Single Bench of High Court at Calcutta passed an order to the effect as noted herein below:

*"1. The petitioners apprehend that their members/supporters may be prevented from casting their votes in the election to the Trade Union of the workmen of the CESC. The petitioner is one such participating Trade Union.*

*2. Counsel for the CESC and the State have submitted that appropriate requests/instructions have been made/given to the Commissioners of Police at Calcutta and Howrah and the Districts where the 22 polling booths are located.*

*3. It is ordered that each of the SPs and the Commissioners of the respective Police District and Commissionerates, shall personally ensure deployment of adequate police forces for the election to be conducted in each of the aforesaid 22 polling booths on March 1, 2024. The management of the CESC shall extend necessary cooperation and provide infrastructure in this regard.*

*4. It is expected that all parties ensure that the election process is conducted peacefully and in an orderly manner.*

*5. The petitioners and the respondents CESC shall communicate a copy of this order to all the S.Ps and the C.Ps concerned.*

*6. Any complaint in the aforesaid process, by any party shall be immediately attended to by the concerned S.Ps and the C.Ps.*

*7. With the aforesaid directions, the instant writ petition shall stand disposed of.*

*8. There shall be no order as to costs.*

*9. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities."*

Ld. Counsel for the appellant also submitted that today when the matter was mentioned before the Hon'ble Justice Rajasekher Mantha the

author of order dated 28.02.2024 quoted herein above it was made clear by the Hon'ble Judge that mentioning of the date of election in his Lordship's order has no bearing if this court while entertaining the application of the appellant herein passes any order to stall the election for appropriate reasons.

Countering the submissions of the Ld. Counsel for the appellant it was submitted by the Ld. Counsel for the respondent no.1, Registrar of Trade Unions that the symbol for election was given to all Trade Unions on the same day and that it is incorrect to say that since the appellant Trade Union was not given the symbol they could not participate in the polling campaign.

Ld. Counsel appearing for CESC submitted that considerable amount has been spent for the preparation for conducting the election in 20 polling centres and office staff have already been sent to the polling centres for conducting the election from 07.00 am onwards on 01.03.2024. To Stall the election at this stage will be a huge monetary loss for CESC. Ld. Counsel for CESC also tried to submit that the present petition filed by the ppellant is beyond the scope of the appeal filed by the Appellant Trade Union. According to the Ld. Counsel the appeal that was preferred by the appellant has already been disposed of by this court passing necessary order in favour of the appellant. Therefore the instant application in the said disposed of appeal cannot be entertained by this court rather should not be entertained to pass any order in favour of the appellant/petitioner.

Having heard the Ld. Counsels and recording the submissions as have been advanced today by the Ld. Counsels appearing for the respective parties, this court is of the opinion that respondent no.1 if would have acted in accordance to the order that was passed by this court on 29.01.2024 such a situation would not have arrived at leading to wastage of resource as has been indicated by the Ld. Counsel appearing for the CESC. The respondent no.1 trying to frustrate the order of this court first issued notice dated 08.02.2024 and thereafter filed the application challenging the jurisdiction of this court and finally accepting the appellant as a registered Trade Union and giving the appellant the symbol to contest the election at a date and time when admittedly polling campaign was stopped.

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In the given circumstance this court directs the respondents to stall the election proceeding for a week enabling appellant/petitioner to conduct its polling campaigning. The situation that is created by the respondents themselves, this court cannot show any sympathy for the loss of resources that is to be incurred by the respondent no.2 for willfully disobeying the order of this court and making endeavours to frustrate the order passed by this Court in favour of the appellant/petitioner.

Hence, it is

Ordered

that the application dated 28.02.2024 filed by the appellant/petitioner is allowed on contest restraining the respondent no.1 by an order of injunction from acting any further towards the ensuing process of election as is contemplated under the notice dated 08.02.2024 being Annexure-J to the instant application for a period of 1 week from the date of passing of this order.

Let a copy of this order be handed over to the Ld. Counsel for the petitioner/appellant counter signed by the Bench Clerk for communicating the same to the respondents for information and necessary action.

Fix 20.03.2024 for hearing of appeal.

Dictated & corrected by me,

Chief Judge,  
City Civil Court, Calcutta.

Chief Judge.