

Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No.285 of 2014

Uttaranchal Roadways Karmchari Union & another
..... **Petitioners**

Versus

State of Uttarakhand & others
..... **Respondents**

Mr. M.C. Pant, Adv. for the petitioners.
Mr. P.C. Bisht, S.C., for the State.
Mr. Ashish Joshi, Advocate, for the respondent nos.4 and 5.

With

Writ Petition (M/S) No.291 of 2014

Uttaranchal Parivahan Majdur Sangh & another
..... **Petitioners**

Versus

State of Uttarakhand & others
..... **Respondents**

Mr. M.C. Pant, Adv. for the petitioners.
Mr. P.C. Bisht, S.C., for the State.
Mr. Ashish Joshi, Advocate, for the respondent no.4.

Reserved on: 05.09.2017
Delivered on: 22.09.2017

Hon'ble Rajiv Sharma , J.

Since the common questions of law and facts are involved in both these petitions, the same have been taken up together and decided by this common judgment. However, in order to maintain clarity, the facts of WPMS No.285 of 2014 have been taken into consideration.

2. Petitioner no.1 is a registered trade union having its registration no.66 of 2003-04. Petitioner no.2 is the General Secretary of the petitioner no.1-Union.

The Uttarakhand Transport Corporation (*hereinafter to be referred as 'the Act'*) came into existence in 2003 by the notification issued by the Central Government. The proposal was sent by the Corporation to the State Government on 30.8.2012 to the effect that the Union, which is having the highest members, will be recognized by the Corporation. In sequel to the communication dated 30.8.2012, the State Government vide letter dated 22.5.2013 dissolved all five employees' union by amalgamating unions to create one registered union. The representatives of various unions were called upon in the meeting which was called upon on 3.6.2013. The minutes of the meeting were sent to the State Government vide letter dated 24.6.2013. The respondent-Corporation prepared a draft of 'Uttarakhand Transport Corporation Employees' Association (Recognition) Election Scheme 2013'. The issue was also raised with the Registrar.

3. The petitioner-Union earlier approached this Court by way of WPMS No.2934 of 2013. It was disposed of by this Court on 2.1.2014 permitting the petitioner to make a representation before the Registrar. The Corporation, on the basis of the Scheme, issued the notification on 1.2.2014 for conducting the election. By order dated 15.2.2014, this Court permitted the election to be held but the result thereof was ordered not to be declared.

4. Learned Counsel appearing for the petitioners has vehemently argued that the State Government has no authority or jurisdiction to dissolve the Union registered under the Trade Unions Act, 1926. It was further contended that there is no distinction between

the permanent employees and the persons appointed under the Contract for participating in the election process. He further contended that the State Government and the respondent-Corporation, without waiting for the order of Registrar, have decided to hold the elections. Learned Counsel appearing on behalf of the respondent has argued that to reduce the number of registered trade unions, the Corporation has decided to recognize only one Union for its smooth functioning.

5. I have heard learned Counsel for the parties and have gone through the pleadings carefully.

6. Section 2(f) of the Trade Unions Act, 1926 (hereinafter to be referred as the 'Act of 1926') defines the 'Registrar'. Section 2(h) defines 'Trade Union'. Sections 2(f) and 2(h) are quoted below: -

“2(f) "Registrar" means -

(i) a Registrar of Trade Unions appointed by the appropriate Government under section 3, and includes any Additional or Deputy Registrar of Trade Unions; and

(ii) in relation to any Trade Union, the Registrar appointed for the State in which the head or registered office, as the case may be, of the Trade Union is situated;

2(h) "Trade Union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions: Provided that this Act shall not affect -

- (i) any agreement between partners as to their own business;
- (ii) any agreement between an employer and those employed by him as to such employment; or
- (iii) any agreement in consideration of the sale of the good-will of a business or of instruction in any profession, trade or handicraft.”

7. The mode of registration is provided u/s 4 of the Act of 1926. The application for registration is to be submitted u/s 5. The provisions to be contained in the

rules of a Trade Union are provided in Section 6. The Registrar is authorized to register a trade union u/s 8 of the Act. Amalgamation of Trade Unions is provided u/s 24. Notice of change of name or amalgamation is provided under Section 25. Dissolution is provided u/s 27 of the Act of 1926.

8. Conditions of service of employees of the Union are governed also under the U.P. Industrial Disputes Act, 1947 (hereinafter to be referred as the 'Act of 1947'). Section 2(i) defines 'Employer'. Section 2(z) provides for the definition of 'workman'. Sections 2(i) and 2(z) are quoted below: -

“2(i) *'Employer' includes -*

- (i) an association or a group of employers;*
- (ii) where an industry is conducted or carried on by a department of the State Government, the authority specified in that behalf, and where no such authority has been specified, the head of such department;*
- (iii) where an industry is conducted or carried on by or on behalf of a local authority, the chief executive officer of such authority;*
- (iv) where the owner of any industry in the course of or for the purpose of conducting the industry contracts with any person for the execution by or under such person of the whole or any part of any work which is ordinarily part of the industry, the owner of such industry;*

2(z) *'Workman' means any person (including apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-*

- (i) who is subject to any Army Act, 1950 or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934; or*
- (ii) who is employed in the police service or as an officer or other employee of a prison; or*
- (iii) who is employed mainly in a managerial or administrative capacity; or*
- (iv) who being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”*

9. Conditions of service of employees are also regulated under the U.P. Industrial Employment Model Standing Orders, 1991.

10. The proposal has been mooted by the Corporation to reduce the number of trade unions on 30.8.2012. The letter was sent to the State Government seeking its permission. The State Government approved the proposal on 22.5.2013 (Annexure CA2 to the counter affidavit filed by respondent nos.4 and 5). Thereafter, the guidelines for conducting the election were notified vide notification dated 1.2.2014.

11. There is a detailed procedure in which the trade unions are registered under the Trade Unions Act. The only requirement under the Act to be registered as a trade union is that any Seven or more members of a Trade Union can apply for registration of a trade union under the Act. The mode of presentation of application is provided u/s 5 of the Act of 1926. Amalgamation of a Trade Union can only be done by two or more registered Trade Unions with or without dissolution or division of the funds of such Trade Unions or either or any of them, provided that the votes of at least one-half of the members of each or every such Trade Union entitled to vote are recorded, and that at least sixty percent of the votes recorded are in favour of the proposal.

12. This Court in WPMS No.2934 of 2013, vide judgment dated 2.1.2014, has permitted the petitioner to make a representation. The Registrar, as per the reply filed by him, was seized of the matter but despite that, the State Government has approved the Scheme on 9.10.2013 and has also taken a decision to dissolve the existing trade unions vide order dated 22.5.2013.

13. Dissolution of a Trade Union, as noticed hereinabove, is provided u/s 27 of the Act. The State Government has no authority or jurisdiction to dissolve a trade union registered under the Trade Unions Act, 1926. The State Government while dissolving the existing Trade Unions, has also overlooked the provisions contained in the U.P. Industrial Disputes Act, 1947, more particularly, Sections 2(i)(iv) as well as Section 2(z). All the employees working in the Corporation are entitled to cast their votes in the election process and the same could not be restricted to permanent employees as per the Scheme framed by the respondent-Corporation. The State Government has also overlooked the provisions of U.P. Industrial Employment Mode Standing Orders, 1991 while dissolving the trade unions on 22.5.2013 as well as granting approval to the Scheme on 9.10.2013. The principle of the Trade Union is to have collective bargaining power. The anxiety of the respondent-Corporation may be to reduce the number of Trade Unions but it can only be done in accordance with law as well as in light of the principle laid down by Their Lordships of Hon. Apex Court in 1995 Supp (1) SCC 678 in the case of '*Food Corpn. Of India Staff Union v. Food Corpn. Of India*' instead of dissolving the existing trade unions registered under the Trade Unions Act, 1926.

14. Accordingly, both the petitions are allowed. Order dated 22.5.2013 passed by the State Government dissolving the Trade Union are quashed and set aside. The Scheme known as 'Uttarakhand Transport Corporation Employees Association (Recognition) Election Scheme 2013, approved by the State Government on 9.10.2013, is also quashed by moulding the relief.

(Rajiv Sharma, J.)