

COVER LETTER**REGISTRATION OF TRADE UNION****NAME OF THE AUTHORS –**

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Abstract

A trade union is a continuous association of wage earners for the purpose of maintaining the conditions of their lives¹ the history of trade unions in India can be traced back to 1890 where first time an association was formed by the mill workers in Bombay as 'Bombay Millhand Workers'. The progress of the trade union movement in India was tremendous, after the post-independent era and now there will be hardly any category of workers which has no union of its own. Trade Union Act, 1926 came into force on 1st June, 1927. Section 2(h) of the Trade Unions Act, 1926 defines trade union as combination whether permanent or temporary, formed primarily for the purpose of regulating the relations between workmen and employers 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 unions² This act is divided into various chapters dealing with various aspects related to Trade Union. This article will be dealing with Registration of the Trade unions. This article basically talks about how the trade union will be registered, who will register, powers of the registrar, rights of the registered trade union, manner in which the executive body of the trade union will be chosen and remedies available with the trade union on event of non- registration or cancellation or withdrawal of the registration and various other aspects.

Key Words: Trade Union, Registration, registrar, Chapter II, Powers, right, manner, cancellation, withdrawal.

¹ Sydney and Beatrice Webb, History of Trade Unions.

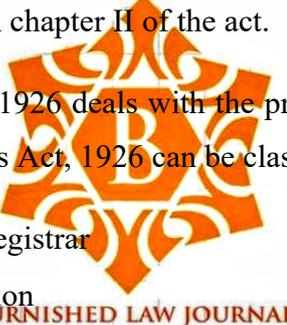
² Section 2(h), Trade Unions Act, 1926.

REGISTRATION OF TRADE UNION

Introduction

The history of trade unions in India can be traced back to 1890 where first time an association was formed by the mill workers in Bombay as 'Bombay Millhand Workers'. The progress of the trade union movement was tremendous after the post-independent era and now there are hardly, any category of workers who have no union of their own. After the case filed by Binny & Co. against Madras Textile Labour Union there was a need for the protection of the trade union and then on the urge of Mr. N.M Joshi, the then general secretary of All India Trade Union Congress moved a resolution to seek introduction of a legislative measure by the government for protection of the trade union and thus after this The Trade Union Act, 1926 was enacted which came into force on 1st June, 1927. This act is divided into various chapters and in this article will be dealing with chapter II of the act.

Chapter II of the Trade Unions Act, 1926 deals with the provisions of Registration of Trade Union. Chapter II of the Trade Unions Act, 1926 can be classified as follows:

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1. Section 3 - Appointment of Registrar
 2. Section 4 - Mode of Registration
 3. Section 5 - Application of Registration
 4. Section 6 - Provisions to be contained in the rules of a Trade Union
 5. Section 7 - Power to call for further particulars and to require alteration of name
 6. Section 8 - Registration
 7. Section 9 - Certificate of Registration
 8. Section 9A - Minimum requirement about membership of a Trade Union
 9. Section 10 - Cancellation of Registration
 10. Section 11 - Appeals
 11. Section 12 - Registered Office
 12. Section 13 - Incorporation of registered Trade Union

Appointment of Registrar

According to section 3 of the Trade Unions Act, 1926 the appropriate Government shall appoint a person to be a registrar of Trade Union for each state. The Appropriate government is also authorized to appoint Additional and deputy registrars of the Trade Union. The additional or deputy registrar shall work under the superintendence and direction of the registrar. The pertinent government shall by order specify and define the local limits within which additional or deputy Registrar shall exercise and discharge his powers and functions and the additional and the deputy registrar shall exercise and discharge the function of registrar as mentioned in the order passed by the pertinent government. Any such additional or deputy registrar appointed discharging the functions of the registrar where the registered office of the trade union is situated will be deemed to be the registrar of the trade union for the purpose of this act.

Mode of Registration

Section 4 of the Trade Unions Act, 1926 expounds that any seven or more members of the trade union may apply for registration of Trade Union and all the members applying for registration must subscribe their names to the rules of the trade union and also the provisions of the act relating to registration. But no trade union of the workmen will be registered unless at least ten percent or one hundred of the workmen whichever is less, are engaged or employed in an establishment or industry with which it is connected are the members of such trade union on the date of making of an application for registration. And there is no trade union of the workmen shall be registered if on the date of making application not less than seven persons as its members are engaged or employed in the establishment or industry with which it is connected. Also if more than half of the members who applied for the registration of trade union of workmen cease to be members of a trade union or dissociate themselves from the application by giving a notice in writing to the registrar before the registration is granted such application will be deemed to be invalid, where only half or less than half members cease to be members of trade Union or dissociate themselves for the application then such an application for registration shall be valid.

Application of Registration

Section 5 of the Act enunciate how the trade union may be registered:

1. An application should be sent to the registrar in which seven or more members of such union must subscribe their name and also subscribe names to the rules of the trade union.
2. The application in form 'A' should be attached with a copy of the rules of the trade union and the statement of the following particulars : (a) the names, occupations, and addresses of the members making the application and in case of trade union workmen their names, occupations, and addresses where they work, (b) the name of the trade union and the address of its head office, (c) the titles, names, ages, addresses and occupations of the office bearers of the trade union.
3. A general statement of the assets and liabilities of the trade union to be prepared in the prescribed manner as required and to be sent with the application to the registrar where a trade union has been in existence for more than a year before the application of registration.

Provisions to be contained in the rules of a trade union

Rules are generally provided to govern and determine the relations between trade union and its members and rules also provide guidance for internal administration of the trade union. It's mandatory for every trade union to have written rules dealing with certain matters specified in Schedule II of the Central Trade Union Regulations, 1938.

The rules of the Trade Union must provide for the following matters:

- a) The name of the trade union,
- b) The objects of the trade union for which it is established
- c) The purpose for which the general funds of the trade union will be applicable and such purposes must be lawful under this act.
- d) The maintenance of a list of the members of the trade union
- e) Number of ordinary members who shall be persons actually engaged or employed in an industry with which the trade union is connected and also the number of honorary or temporary members required under section 22 to form the executive body of the trade union.
- f) Minimum subscription required to be members of trade union: one rupee per annum for rural workers, three rupees per annum for workers in other unorganised sectors, twelve rupees per annum for workers in any other case.

- g) Conditions where members shall be entitled to any benefit or where fines or forfeiture may be imposed on the members.
- h) Manner in which rules of the union shall be amended, varied or rescinded.
- i) Duration period of the services of the executive body of the trade union which shall not be more than three years.
- j) Manner in which the executive body of the trade union shall be appointed and also conditions of removal of the executives.
- k) Safe custody of the funds of the trade union, manner of annual audit and adequate facilities for the inspection of the account.
- l) Manner in which the trade union may be dissolved.

In *I.T Commr. W.B. v. I.S. Mills Asscn*[1] in this case rule 4 and 64 of the trade union were repugnant to each other. It was held that all the rules framed by the association co-exist and the court cannot consider any one particular rule as primary and the court had no right to re-write the rules of a registered trade union by deleting any of them.

In *M.T. Chandersenan v. Sukumaran*[2] it was held that if subscriptions are not paid by the trade union particular persons cease to be the members of the union but membership cannot be denied based on any pretext.

In *Bokajan Cement Corporation Employees Union v. Cement Corporation of India Ltd.*[3] It was held by the Supreme Court that an employee would not automatically cease to be a member of the trade union on termination of the employment as there is no such provision in the trade union act and the particular case there was no such provision in the constitution of the union.

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Power to call for further particulars and to require alteration of name

Section 7 of the trade union act, 1926 enunciate that the registration of the trade union shall be cancelled or refused by the registrar if:

- a) The name proposed by the trade union is same as of an existing trade union.
- b) Or if the name of the trade union is deceive to the public or any of the members of the either trade union.

In such a case the registrar may require the persons applying for registration to alter the name of the trade union and the registrar shall register the trade union after such alteration. The registrar to further inquire where the provision of section 5 & section 6 of the act are met with or not may ask for any such information or application as may be required for the purpose of

satisfaction of the registrar. But the registrar could not intervene in the matter of holding the election of the office bearers of a registered trade union³.

Registration

Section 8 of the act expounds that the registration of the trade union will take place when the registrar will be satisfied the all the provisions related to the act related to the registration are met with. All the necessary entries related to the registration of the trade union shall be made in the register by the registrar and all the necessary particulars with an application of the registration shall be also entered in the register.

There is nothing in the act that bars the formation of rival Unions or requires any Union applying for registration to give notice to all existing Unions⁴. And where the registrar takes no action on an application for more than three months, a writ under Art. 226 can be issued commanding the registrar to deal with the application⁵.

In *Chemosyn (P) Ltd. & others v. Kerala Medical and Sales Representatives Association*⁶, it was held that trade union registered under this act is not a statutory body and the activities of the trade union are not identical to governmental functions and also not of public importance, therefore, it is not covered under article 12 of the Indian constitution and also not amenable to writ jurisdiction.

In *O.N.G.C Workmen's Association v. State of West Bengal and others*⁷, it was held that the registrar of a trade union is not a quasi-judicial authority and cannot hold an inquiry by allowing parties to examine witnesses and decide the dispute as to who are real office-bearers. Where two rival groups claim to be office bearers there the registrar to decide a dispute may hold an inquiry in the presence of both parties. The registrar can only make a reasonable inquiry within the scope of section 8 and 28 of the act to ascertain as to who are the elected office bearers and

³ Tata Workers Union v. State of Jharkhand & Another (2002) III L.L.J 474.

⁴ Keshoram Rayon Workers Union V. Registrar of Trade Unions.

⁵ Rajanka Limestone Quarries Mazdoor Union V. Registrar Of Trade Union, A.I.R 1958 Pat. 470.

⁶ (1988) II L.L.J. 43 (Kerala).

⁷ (1988) II L.L.J. 335 (Cal.).

to register their names and registrar does not discharge any quasi-judicial function under section 28 of the act but discharge only administrative functions⁸.

Certificate of Registration

According to Section 9 of the act, the registrar on being satisfied and registering the trade union shall issue a certificate of registration in the prescribed form. And this form shall be conclusive evidence for registration of the trade union.

It was held in *IFFCO, Phulpur Karmchhari Sangh v. Registrar of Trade Unions and others*⁹, that once the trade union is registered by the registrar of trade unions under section 8 of the trade union act, 1926, certificate of registration continues to hold good until it is cancelled. The action of the registrar of Trade unions registering the change of names of office bearers of a union does not amount to the registration of trade union.

Minimum requirement about membership of a trade Union

Section 9A explains that a registered union shall at all times continue to have not less than ten percent or one hundred of the workmen, whichever is less.

Cancellation of Registration

Section 10 expounds powers to the registrar to withdraw or cancel the registration of the trade union. Following are the circumstances in which registrar can exercise his power:

1. Application of the trade union for withdrawal or cancellation of registration to be verified. And in this case, the registrar shall first satisfy himself that such a decision was approved by a general meeting or approval of the majority of members of the trade union for this purpose the registrar shall call for particulars as required. But when the registration is withdrawn
2. If the registrar feels that the certificate of registration has been obtained by fraud or mistake.
3. Where the trade union has ceased to exist.

⁸ Fateh Solanki And Other V. Rashtriya Mill Mazdoor Sangh And Others (1994) I L.L.J 294 (Raj.).

⁹ (1992) II LLJ 239.

4. And even after the notice from the registrar the union has contravened from the provision of the act or rule of a union which is a contravention of the act is still in force and for cancellation of the registration of a trade union wilful contravention of a provision of the act is necessary¹⁰

5. If the registrar is satisfied according to section 10 clause (c) that registered trade union of workmen ceases to have a requisite number of members.

6. Where the union has rescinded any rule providing for any matter provision provided under section 6 of the act.

As in the case of *Bombay Fire Fighters Services Union, Mumbai v. Registrar Trade Unions, Bombay*¹¹ the trade union filed an appeal against the registrar for cancellation of their registration for continuing contravention of section 28 by the trade union. In this case, the High Court held the cancellation by the registrar as illegal and improper as the trade union was not given previous show cause notice and there was a violation of section 10 of the act.

Appeals

Section 11 of the act gives a limited right to the trade union to appeal against the registrar's decision taken under section 10 of the act. An appeal must be filed within the prescribed time by any person aggrieved by the order of withdrawal or cancellation by the registrar or non-registration by the registrar. The proceeding for the appeal must start within the time period of 60 days from when the order was passed by the registrar.

An appeal shall be filed in the following courts and tribunals as under:

1. Where the head office of the trade union is within the limits of presidency town to the high court. High Court in section 11 of the acts includes its original as well as appellate jurisdiction¹².
2. Where the head office of the trade union is situated in the jurisdiction of the labour court or Industrial tribunal as the case may be.
3. Where the head office of the trade union is in other areas then an appeal can be filed in such court which is not inferior to the court of an additional or assistant judge of

¹⁰ *Tata Electric Companies Officers Guild v. Registrar of Trade Unions* (1994) 1 L.L.J. 125 (Bom).

¹¹ (2003) II L.L.J. 1100 (Bom).

¹² *Mihir Kumar Guha v. Registrar of Trade Unions, West Bengal, Calcutta*, A.I.R 1961 Cal. 165.

a principal Civil Court of original jurisdiction or in the court prescribed by the appropriate government for that area.

There is a certain oddity in section 11 as it is clear in that the head office of the trade union situated in the presidency town shall have only one right to appeal but the head office of trade union situated in mufassil area shall have two rights of appeal first they need to move to the local court exercising original jurisdiction and then prefer High Court to appeal against the decision of Lower Court. This judicial notice was taken up in the case of Registrar of Trade Unions, West Bengal, Calcutta v. Mihir Kumar Guha.

In the case of Mukand Iron & Steel Works Ltd. v. V. G. Deshpande, Registrar of Trade Unions Bombay¹³ the question was whether registrar of the trade union can withdraw the cancellation of registration, so the court in the particular case held that if the registrar once cancels the or withdraws the registration of the trade union he has no power to review as well as withdraw it and where the registrar review or withdraw such order such exercise of power by the registrar will be considered as without jurisdiction. But the trade union whose registration has been cancelled has remedies in form of filing an appeal or application for fresh registration. In a case where appeal succeeds the cancellation then such cancellation order would be considered as *void ab inito* and trade union shall continue as if such cancellation order had never been passed.

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Registered Office

All communications and notices to a registered trade union may be addressed to its registered office and any changes in the name of the trade union or address of the trade union shall be given in writing within fourteen days of such change to the registrar and changes shall be recorded as per section 8 of the act by the registrar¹⁴.

Incorporation of the trade Union

A trade union may be registered, unregistered and recognised. There is a distinction between the three types as the members of the registered and recognised trade union enjoy certain benefits which the members of the unregistered trade union do not enjoy.

¹³ (1986) II L.L.J. 290 (Bom.).

¹⁴ Section 12, The Trade Unions Act, 1926.

Section 13 of the act expound the advantages a registered trade union becomes entitled to. Following are the advantages:-

1. Becomes body corporate under the name in which it is registered.
2. Entitled to perpetual succession and a common seal.
3. After registration trade union can acquire both movable and immovable property.
4. Trade Union can contract through agents.
5. Like a company trade union can sue or be sued in its registered name.

Conclusion

The presence of trade unions establishes a healthy relationship between the employer and workmen with a sense of responsibility towards each other. Trade unions define and channelize the rights of the workers with pressure on the employer to not deceit them. The registration of Trade Union ensures that a trade union duly certified and recognized and thereby the provisions for the same are laid down exhaustively in the Act.

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