

# EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 11/13

## APPEAL

## JUDGMENT

**Before:**

<b>Rashid Hossen</b>	-	<b>President</b>
<b>Ramprakash Ramkissen</b>	-	<b>Member</b>
<b>Rajesvari Narasingam Ramdoo (Mrs)</b>	-	<b>Member</b>
<b>Triboohun Gunnoo</b>	-	<b>Member</b>

**In the matter of:-**

<b>Energy Services Division Workers Union</b>	<b>(Appellant)</b>
<b>And</b>	
<b>Registrar of Associations</b>	<b>(Respondent)</b>

**In presence of: Energy Services Division Electrician and Other Workers Union**

This is an appeal against the decision of the Registrar of Associations to register the Co-Respondent, the Energy Services Division Electrician and Other Workers Union. The grounds of appeal are as follows:-

“(a) *The ESD Workers Union is registered to the Registrar of Associations since 1982 and represents the following grades in the Energy Services Division (i) Electricians (ii) Assistant Tradesmen Electrician (iii) Chief Tradesmen (iv) Drivers (v) Office and Premises Workers (handyman).*

- (b) *The ESD Workers Union is solely recognized by the ESD Management and its parent Ministry (M.P.U. & R.E) and has solely represented its members in many discussions panels.*
- (c) *The ESD Workers Union represents the majority of all the Manual Workers Grade in the Energy Services Division.*
- (d) *The members who are forming part of the ESD Electricians and Other Workers Union (ESDEOWU) are already represented by the ESD Workers Union during all negotiations at all levels.*
- (e) *The newly created union (ESDEOWU) is only intended to meet the ego of its 'soi disant' President, Vice President & other committee members as, after having lost free & fair ESDWU elections and after having used subterfuges to declare the ESDWU incompetent the only move they have is to create division among the members of the Union of which they were formerly President & Vice President.*
- (f) *As all the members of the ESDEOWU are already represented by the ESD Workers Union and as the ESDEOSU has admitted members other than Electricians in its Union and Appellant considers that it is in breach for a fair and equitable Industrial relation as the ESDEOWU may admit other members of the ESDWU who will therefore form part of two (2) unions.*
- (g) *Appellant therefore finds the creation of another union representing the Manual Workers Grade in the Energy Services Division as non desirable."*

The Appellant was represented by Mr S Murday, Counsel and the Respondent by Mr Y Jean Louis, Senior State Counsel.

The Co-Respondent stood *inops Consilli*.

In a Statement of Defence resisting the appeal, the Respondent avers that the criteria for the Registrar of Associations to register a trade union are set out in **Section 5 (1) of the Employment Relations Act**. It further avers that none of the grounds of appeal invoked a contravention of **Section 5 (1) of the Act**. It avers that this appeal is devoid the merits and prays that it be set aside.

Mr Alain Jean Claude Batterie representing the interest of the Appellant adduced testimonial evidence to the effect that the Energy Services Division Workers Union exists since 1982. It first represented the interest of all manual workers and gradually the creation of different scheme of duties led to the creation of another union. That union has as members the Plant Mechanics. Following the election at the level of the Union in 2011 whereby the deponent's team got elected, the losing party being dissatisfied started the creation of the union.

The representative of the Registrar of Associations, Mr Premchandra Teka deponed to the effect that according to him the requirements set out under **Section 4 of the Employment Relations Act** with respect to the Registration of the trade union have been met. There was nothing in the application that could lead him to suspect that the rules of the trade union did not comply with the Act or with the Constitution. The witness further added that the name of the trade union in question did not bear close resemblance to the name of any other trade union. According to records, at the time of application the Energy Services Division Electrician and Other Workers Union had 53 members.

The representative of the Energy Services Division Electrician and Other Workers Union, Mr Ootumsingh Angateah stated that the creation of that union was the result of some members being dissatisfied with the way

matters were being run by the Energy Services Division and Other Workers Union. Counsel for the Appellant submitted that the creation of another union following some members' frustration is not in the interest of the workers. The one who wished to be elected President turned out to be a bad loser and he decided to form another union.

The Senior State Counsel submitted that the present appeal is one under **Section 5 (8) of the Employment Relations Act** which is an appeal against the decision of the Registrar of Associations to register the trade union. According to Counsel the Appellant has not in any way so far shown in what way the Registrar has failed in his application of the law.

### **Tribunal's Considerations**

**Part II of the Employment Relations Act 2008** deals specifically with Registration of Trade Unions:

#### **“4. Application for registration**

- (1) Any trade union shall, not later than 30 days after the date of its formation, apply to the Registrar for registration.
- (2) An application for registration of a trade union shall be in the approved form and shall be accompanied by -
  - (a) the prescribed fee;
  - (b) 2 copies of the rules of the trade union;
  - (c) a certified copy of the minutes of proceedings of the meeting approving the formation of the trade union; and
  - (d) a statement of particulars, which shall include the address of the registered office of the trade union.
- (3) The Registrar may by written notice, within 14 days of the receipt of an application under subsection (1), require the applicant trade union to provide any additional information which he may reasonably require for the purpose of considering the application.

- (4) The Registrar may, where the applicant trade union fails to comply with the requirements of the subsection (3), refuse the application.

## **5. Registration of trade unions**

- (1) The Registrar may register a trade union where –
- (a) the requirements of section 4 have been complied with;
  - (b) the rules of the trade union comply with this Act and the Constitution of Mauritius;
  - (c) the name of the trade union is not the same as that of a registered trade union or does not bear close resemblance to that of a registered trade union;
  - (d) in the case of a trade union of workers that has public officers as members, membership is limited to public officers;
  - (e) the trade union of workers has a minimum of 30 members;
  - (f) the trade union of employers has a minimum of 5 members.
- (2) The Registrar shall, not later than 30 days –
- (a) after receipt of an application for registration;
- or*
- (b) after receipt of information requested for under section 4 (3), register or refuse to register the trade union.
- (3) The Registrar shall specify the address of the registered office of a registered trade union.
- (4) Subsection 1 (d) shall not apply in relation to the registration of a federation or a confederation comprising civil service unions and other trade unions.
- (5) Where the Registrar registers a trade union under subsection (2), he shall publish a notice of registration in the *Gazette* and in 2 daily newspapers.
- (6) Where the Registrar refuses to register a trade union, he shall, within 7 days of his decision, give written notice to the applicant trade union stating the grounds of the refusal.
- (7) An applicant trade union aggrieved by a decision not to register the trade union under subsection (2) may, within 21 days of the written notice, under subsection (6), appeal to the Tribunal against that decision.

- (8) Any other registered trade union aggrieved by a decision of the Registrar to register a trade union may, within 21 days of the publication of the notice in the *Gazette*, appeal to the Tribunal against that decision.
- (9) The Tribunal shall hear and determine an appeal made under subsection (7) or (8) within 90 days of the date of lodging of the appeal.
- (10) A trade union which has not obtained its registration, whether by the Registrar or on appeal, shall be dissolved forthwith and be wound up within 30 days of the decision of the Registrar, or the decision on appeal, as the case may be.
- (11) Where a trade union is not wound up within the time specified in subsection (10), every officer of the trade union shall commit an offence and the trade union shall be wound up by the Registrar in the prescribed manner.

#### **6. Certificate of registration**

- (1) The Registrar shall, within 7 days of the registration of a trade union, issue a certificate of registration to the trade union.
- (2) A certificate of registration shall be in the approved form and shall, unless the registration is cancelled under section 7, be conclusive evidence that the trade union is registered.

.....”

The respondent union applied to the Registrar of Associations for registration. Notice of the application was published in the *Gazette* by the Registrar in conformity with **Section 5 (5) of the Employment Relations Act**.

None of the grounds of appeal advanced by the Appellant fall within the purview of the legal requirements for a trade union to be registered. Indeed the Registrar may register a trade union the moment the requirements of **Section 4 of the Employment Relations Act** have been complied with. Appellant has failed to show in what way the registration of the trade union has not been complied with the **Employment Relations Act**

and the **Constitution of Mauritius** nor has it been made a ground of appeal that the name of the trade union is not the same as that of a registered trade union or does not bear close resemblance to that of a registered trade union. The Registrar is bound not later than 30 days either to register or refuse to register. It is clear that exercising a refusal would be following a non-compliance with any of the specific requirement of **Sections 4 and 5 of the Employment Relations Act.**

*“...In seeking registration the respondent unions were exercising the constitutional right of their members to form or belong to a trade union. It was, therefore, for those who wished to hamper the exercise of that right to show cause against it...”*

*It is reasonable to infer that when the trade union has already been registered and so long as it remains on the register there is some sort of a presumption that none of the grounds upon which its registration would have been refused can be invoked...”*

([The Mauritius Reports, 1976] **Union of Labourers of the Sugar and Tea Industries v. Permanent Arbitration Tribunal and Plantation Workers Union v. Permanent Arbitration Tribunal and Ors and Organisation of Artisans Unity v. Permanent Arbitration Tribunal**)

This appeal is devoid of merit and is accordingly set aside.

**(Sd)Rashid Hossen**  
**(President)**

**(Sd)Ramprakash Ramkissen**  
**(Member)**

**(Sd)Rajesvari Narasingam Ramdoo (Mrs)**  
**(Member)**

**(Sd)Triboohun Gunnoo**  
**(Member)**

**Date: 26 April 2013**