

EMPLOYMENT RELATIONS TRIBUNAL

ORDER

ERT/ RN 42/24

Before

Indiren Sivaramen	Acting President
Bhawantee Ramdoss	Member
Kirsley E. Bagwan	Member
Muhammad Nayid Simrick	Member

In the matter of:-

Registrar of Associations (Applicant)

And

Union of Pharmacists (Respondent)

This is an application made by the Applicant under section 7(3) of the Employment Relations Act, as amended (the "Act"), for an order directing the cancellation of the registration of the Respondent union. The Applicant was assisted by Counsel whereas the Respondent was initially represented by a member of the union, one Mr M.Jauhangeer. The latter was assisted by one Mr B.C Baomy, Secretary of the Congress of Independent Trade Union (CITU) to whom the Respondent was affiliated. The matter was fixed for the Respondent to file any Statement of Defence and at the next sitting a letter dated 7 May 2024 and signed by both Mr M.Jauhangeer (simply as a member of the Respondent) and Mr B.C Baomy was filed. The letter included the following:

The Union of Pharmacist is affiliated to Congress of Independent Trade Union.

We are aware that the union has failed to submit its yearly return for the year 2016-2022 to the Registrar of Association (sic).

This was due to the Covid-19 Pandemic and due to the illness of [.....] (edited) who is following treatment in Chennai, India for the past two years.

We apologize and we request the President of the Employment Relations Tribunal to give us a chance to maintain our union for the interest of our members and to submit our return for the above mention (sic) period in a period which will be granted to us.

The C.I.T.U will assist us in submitting the return to the Registrar of Association (sic).

The matter was fixed for hearing and all parties were informed. At the hearing of the matter, Mr K.Bhugwan, from the Federation (CITU) to whom Respondent was affiliated was present to represent the Respondent. The representative of Applicant deponed before the Tribunal. She stated that the Applicant is asking for the cancellation of the registration of the Respondent since the latter has not submitted its annual returns since its registration. A notice was sent to the Respondent but there was no response. A certified true copy of the notice dated 22 February 2023 served on the Respondent was produced (Doc A) and Mr K.Bhugwan was agreeable with the contents thereof. The representative of Applicant stated that despite Doc A, no returns were received and no response was also received from the Respondent. However, on 16 May 2024 (following the previous sitting of the Tribunal) the Registrar of Associations received two annual returns for the years 2022 and 2023. Certified true copies of the annual returns together with a covering letter were produced and marked Docs B and C. In the said letter dated 13 May 2024 signed by the President of the Respondent, it is written:

“We are now submitting our Annual Return for the years 2022/2023 and the remaining years will be submitted by next week.”

The representative of Applicant stated that on 30 May 2024 they received annual returns for the years 2016 to 2023. Certified true copies of these annual returns were produced and marked Docs D, D1, D2, D3, D4, D5, D6 and D7. The representative of Applicant stated that the returns filed were found to be incorrect and not complete.

The representative of Applicant highlighted numerous problems with the returns filed. She stated that the returns were arithmetically not correct since the balances did not correspond to the sums obtained when taking (opening) balances adding receipts and deducting payments. They were signed by only one auditor and not by two auditors (as per Article 16 of the Rules of the Respondent, two auditors shall check all the receipts and payments and certify accordingly). She stated that all the annual returns had to be approved at an Annual General Meeting (AGM) and that the notices for the AGMs had to be attached to the annual returns whereas these documents were missing. She added that the certificate of officers of the Respondent was incomplete. Instead of having ten (10) members on the Managing Committee in line with the Rules of the Respondent, there were only three (3) members on the Managing Committee as per the returns. She stated that there were similar issues with both batches of annual returns which were submitted. A certified true copy of the Rules of the Respondent was produced (Doc E). She referred

to an annual return where there was mention of Rs 100 as Cash at Bank whereas there was no reference at all to the bank account of the Respondent. She stated that the Applicant was maintaining his stand to cancel the registration of the trade union and that the Respondent had failed to submit proper returns.

Mr K.Bhugwan was explained his rights and he stated: "Since the last meeting here, we did what we could and the President had to travel. If we are given the possibility, we can adjust all these. It is so easy and simple to do it." He also prayed for "a little short time delay". Only then, he stated that he was asked by the President and Secretary of the Respondent to represent them today and that the Respondent is affiliated to his Federation. He prayed that some more time be granted so that they can complete everything and submit. When it was suggested to Mr Bhugwan that the annual return for each and every year had to be considered by the Annual General Meeting, the latter stated that it might be that they did it but that they did not eventually send the returns. He appealed for a last delay. The Tribunal granted another postponement to the Respondent and requested that a representative from the Respondent itself should be in attendance at the next session.

At the next sitting, the President of the Respondent, Mr S. Khodabocus and Mr K.Bhugwan were present. The representative of Applicant was cross-examined and she stated that on 3 July 2024 they received documents which were submitted anew concerning the period 2016 to 2023 but that again the documents were incomplete. The list of 'Managing Members' was missing and press notices which had to be attached to the accounts were not attached. She stated that as per the accounts produced for the period 2016 to 2019, only an annual sum of Rs 1850 would have been collected as trade union fees whereas for years 2020 onwards only a sum of Rs 2000 would have been collected as trade union fees. She added that though the Respondent suggested that it had 39 members for the year 2023, only a sum of Rs 2000 was allegedly collected for the year 2023 as opposed to a sum of Rs 23400- (39 x Rs 50 x 12) which had to be collected if the members had indeed been contributing their trade union fees. She suggested that the members must be non-compliant members so that they would not be able to participate in Annual General Meetings. She stressed on the fact that the notice was duly served on the Respondent at the address of the seat of the Respondent and was also copied separately to the President, Secretary and Treasurer of the Respondent. She stated that she was not aware of any alleged request for a change of address for the Respondent. She added that if ever there was any change of address, the Respondent or the Secretary of the Respondent should have submitted a letter to that effect, that is, it should have been in writing.

The President of the Respondent deponed before the Tribunal and he prayed for the indulgence of the Tribunal. He stated the following:

“Et on ne peut pas retourner en arrière. We can't come back to what has happened. Mais, je demanderai indulgence et qu'on nous donne une chance de tout refaire et de reprendre à zero parce qu'on ne peut pas effacer le passé et ce que nous voulons est nous voulons aller vers le présent et bien.”

He added : *“Mais, nous ne voulons pas retourner vers le passé, mais ce que nous vous demandons, nous demandons qu'on nous donne une chance de tout refaire. Disons, vous pouvez nous vérifier, faire des vérifications chaque six mois pour voir si vraiment l'union fonctionne d'après les normes.”* The President of the Respondent then stated : *« Et vous m'aviez demandé pourquoi l'union n'a pas de compte, parce qu'il y a des fois les membres ne sont pas accessibles. Nous voulons pas garder un compte pour être redevable et comme aussi, parce que je suis sous serment, les membres ne veulent pas payer. »*

The President of the Respondent later continued as follows: *“Mais, s'il y arrive qu'on a fauté quelque peu, peut-être avec nos responsabilités comme professionnels, parce qu'un pharmacien est responsable de sa pharmacie de l'ouverture à la fermeture. Donc, il y a des fois, vraiment c'est difficile de trouver le moment et l'heure pour venir faire la démocratie. Je ne dis pas qu'on doit accepter ce que nous avons fait mais c'est difficile et ce n'est pas vraiment easy, facile de rencontrer tous les pharmaciens, de faire des trucs bureaucratiques.”*

The Tribunal has examined all the evidence on record. The application is for the cancellation of the registration of the trade union on the ground specified under section 7(1)(d) of the Act. The application itself is made under section 7(3) of the Act.

Sub-sections (1)(d) and (3) of section 7 of the Act read as follows:

7. Cancellation of registration

(1) The registration of a trade union may be cancelled on the ground that -

(a) ...

(d) the trade union has persistently been infringing the requirements of its rules or Parts II and III of this Act and has failed to remedy the default, within such time limit as may be specified in a notice of default issued by the Registrar; or

(e) ...

(3) Where the Registrar is of the opinion that the registration of a trade union should be cancelled on any of the grounds under subsection (1), or where the trade union fails to show cause, or objects to the application for cancellation as

required under subsection (2), the Registrar shall apply to the Tribunal for cancellation.

The Tribunal will, for the purposes of the present application, consider only the ground specified under section 7(1)(d) of the Act and will not rely on any evidence which may pertain to section 7(2) of the Act (which includes the situation where, after examination of returns submitted under section 25 of the Act, the Applicant has reasonable cause to believe that the registration of a trade union should be cancelled). The notice of default (copy produced as Doc A) which has been served on the Respondent in the present case is dated 22 February 2023 and provides as follows:

NOTICE

[Section 7(1)(d) of the employment Relations Act]

Notice is hereby given to Union of Pharmacists to the effect that its annual returns for the accounting period ended 31 December 2016, 2017, 2018, 2019, 2020 and 2021 respectively have not been submitted to the Registrar of Associations as required by section 25(1) of the Employment Relations Act which reads as follows:

“25. Annual return to Registrar

- (1) *Every trade union shall, not later than 4 months after its accounting date, submit to the Registrar an annual return in the approved form which shall include –*
- (a) *certified copies of the statements of receipts and payments and of the assets and liabilities referred to under section 24; and*
 - (b) *a list of members of the managing committee, including its office bearers and, the auditors and the appointed negotiators for the accounting period in respect of which the return is submitted.”*

The above annual returns should have been submitted not later than 30 April 2017, 2018, 2019, 2020, 2021 and 2022 respectively. The trade union is requested to submit the above annual returns forthwith but in any case, not later than 21 March 2023 failing which action will be taken to cancel its registration on the ground specified at section 7(1)(d) of the Employment Relations Act which reads as follows:

“7. Cancellation of registration

(1) *The registration of a trade union may be cancelled on the ground that -*

(a) ...

(b) ...

(c) ...

(d) the trade union has persistently been infringing the requirements of its rules or Parts II and III of this Act and has failed to remedy the default, within such time limit as may be specified in a notice of default issued by the Registrar; or”

The Tribunal notes that the said Notice was sent to the Union of Pharmacists at Pharmacy Rigel whose address is given as being the registered office of the Respondent. The Notice was also copied to the President of the Respondent, Mr M.S Khodabocus at his given address, to the Secretary of the Respondent, Mr S.Seetohul and to the Treasurer of the Respondent, Mr C.Dookhun. It has been suggested by the President of the Respondent that there was a request for correspondences to be addressed to the Federation (to which the Respondent was affiliated). He also suggested that the said Mr C.Dookhun did not reside at the Champ de Mars. The President of the Respondent averred that the request for correspondences to be addressed to the Federation was made verbally in a meeting. The representative of the Applicant maintained however, that if there was any change in address, the Respondent should have informed the Applicant in writing of the change of address. There was no evidence at all of any such written communication (be it from the President of the Respondent or the representative of the Federation).

The Tribunal notes that it is provided at Article 2.2 of the Rules of the Respondent that:

2.2 In the event of any change in the situation of the registered office of the Union, notice of such change shall be given within 7 days to the Registrar of Associations.

The Tribunal also notes that though Mr M.S Khodabocus claimed that the said Mr C.Dookhun, who was mentioned by the representative of the Applicant as being the Treasurer of the Respondent, did not reside at the Champ de Mars, he did not however mention that the latter was not the Treasurer. The Tribunal notes that as per annual returns produced before the Tribunal (Docs B, C, D to D7), the name of the said Mr C.Dookhun does not appear in any of the returns produced not even in the annual return alleged to be for the year 2016. There is absolutely no explanation for same on the part of Respondent before us.

The Tribunal finds that the Notice (Doc A) was duly addressed to the Respondent at Rigel Pharmacy at the registered office of Respondent. The Notice was duly copied to, at least the President and the Secretary of the Respondent. There is no evidence from the Respondent that the Notice was not properly addressed to the President or Secretary of the Respondent (for the ‘Treasurer’, it was only suggested that the said Mr C.Dookhun did not reside at the Champ de Mars). The Tribunal is satisfied in the light of the evidence on record that the Notice was duly served on the Respondent at the registered office of the Respondent and on the Secretary of the Respondent. The Tribunal is not satisfied

that the Notice should instead have been sent to the Federation in the absence of any written request to that effect.

There is unchallenged evidence on record that the Respondent had not filed any of the annual returns for the periods ending 31 December 2016, 2017, 2018, 2019, 2020 and 2021 respectively as required under section 25(1) of the Act (which is included in Part III of the Act). There is also unchallenged evidence on record that the Respondent was, at the same time, infringing the requirements of its own rules including, for example, Articles 14.5, 14.7, 15.3.1 and 16.1 which read as follows:

- 14.5 *The Secretary shall, not later than 4 months after its accounting date, submit to the Registrar of Associations, an annual return in the approved form which shall include –*
 - 14.5.1 *certified copies of the statements of receipts and payments and of the assets and liabilities referred to under section 24 of the Employment Relations Act; and*
 - 14.5.2 *a list of members of the Managing Committee, including its office bearers and, the auditors and the appointed negotiators for the accounting period in respect of which the return is submitted.*
- 14.7 *The Secretary shall cause a copy of the last general statement prepared under Rule 15.3.1 to be prominently exhibited at the registered office of the Union.*
- 15.3.1 *The Treasurer shall prepare a statement in the manner approved by the Registrar of Associations and cause same to be audited by the Auditors of the Union and submitted for approval by the Annual General Assembly.*
- 16.1 *Two Auditors shall be appointed every two (2) years by the Annual General Assembly.*

The Respondent has thus persistently been infringing section 25(1) (which falls within Part III) of the Act, and despite the Notice sent to the Respondent (Doc A), it is not denied that the latter did not remedy the default within such time limit as specified in the Notice, that is, by 21 March 2023 latest. It was submitted by the representative of the Federation that may be the Respondent had published accounts and that the returns had simply not been filed with the Applicant. He prayed for some more time to be able to do the needful. However, it is clear from the testimony of the President of the Respondent (and letter dated 7 May 2024 on behalf of the Respondent) that this was not the case and that returns were only now being made with various inconsistencies and the relevant procedures provided by the Act, including, for example, in relation to section 24 of the Act – ‘Statements to annual general assembly’, had not been followed. Trade unions no doubt

play a very important role in the field of employment relations and have rights which are protected under the Act. However, in return for the enjoyment of such rights, there are certain obligations which are imposed on trade unions by virtue of the Act. These obligations are crucial to ensure transparency and good governance, the more so that trade unions benefit from trade union fees from their members. Strict adherence to the requirements of the Act and to the trade union's own Rules is the bare minimum.

The President of the Respondent has pleaded for the indulgence of the Tribunal and has accepted that whilst they cannot come back to what has happened, the Respondent was prepared to start afresh. The Tribunal is not prepared in the light of the very important principles highlighted above to condone the omissions of the Respondent which has persistently been infringing the requirements of section 25 of the Act. Despite the Notice duly served on the Respondent whereby a further delay of up to 21 March 2023 was given to the Respondent, no annual returns were submitted for the accounting periods ending 31 December 2016, 2017, 2018, 2019, 2020 and 2021 respectively. It is only now when the case is before the Tribunal that returns are being made with all sorts of inconsistencies (the less said, the better) signed by the Secretary, the 'Treasurer' and one Auditor of the Respondent. These returns contain statements of accounts which were not approved as required by the Act.

For all the reasons given above, the Tribunal has no hesitation in finding that the registration of the Respondent should be cancelled on the ground specified under section 7(1)(d) of the Act. Rule 25.2 of the Rules of the Respondent provides as follows:

25.2 All the debts and liabilities legally incurred on behalf of the Union shall be discharged and the remaining funds and property divided equally among the compliant members in the event of:

25.2.1 the Union being dissolved as provided in Rule 25.1.

25.2.2 the registration of the union being cancelled by order of the Employment Relations Tribunal.

In the light of all the evidence on record, the Tribunal directs the Applicant to cancel the registration of the Respondent. Any assets of the Respondent shall be disposed of as provided for by Rule 25.2 of the Rules of the Respondent. In the event the Respondent is not wound up as per the above and section 7 of the Act, the Respondent shall be wound up by the Applicant in the prescribed manner.

Finally, the Tribunal will rely on section 105(3) of the Act in the present case since one of the members on the panel which heard the case travelled abroad after the case was heard.

(SD) Indiren Sivaramen

Acting President

(SD) Bhawantee Ramdoss

Member

(SD) Kirsley E. Bagwan

Member

(SD) Muhammad Nayid Simrick

Member

29 August 2024