**EMPLOYMENT RELATIONS TRIBUNAL**

 **ORDER**

**ERT/RN 111/2024**

*Before*:

**Shameer Janhangeer - Vice-President**

**Anundraj Seethanna - Member**

**Chetanand K. Bundhoo - Member**

**Divya Rani Deonanan (Mrs) - Member**

*In the matter of*:

**Registrar of Associations**

*Applicant*

**and**

**Union of Private Secondary Education Employees**

*Respondent*

*In presence of:*

**Secondary and Preparatory School Teachers and Other Staff Union**

*Co-Respondent*

The Registrar of Associations has applied under *section 7 (3)* of the *Employment Relations Act* (the “*Act*”) for the cancellation of the registration of the Union of Private Secondary Education Employees (“UPSEE”) as a Trade Union. As per the application, the Applicant received an application from the Secondary and Preparatory School Teachers and Other Staff Union (“SPSTSU”) under *section 7 (2)* of the *Act* for the cancellation of registration of the UPSEE on the ground that the registration of the latter was obtained by fraud or misrepresentation.

All three parties were assisted by Counsel. Ms B. H. Maherally, Principal State Counsel appeared for the Applicant instructed by the Deputy Chief State Attorney; Mr M. Ramano appeared for the Respondent; and Mr J. Moirt appeared for the Co-Respondent instructed by Ms G. D. Gopaul, Attorney-at-Law. Both the Respondent and Co-Respondent have put in their respective Statement of Case in the present matter.

*THE EVIDENCE OF WITNESSES*

 Mrs R. Junkeesaw-Sunjhoreea, Ag. Principal Inspector at the Registrar of Associations, was called on behalf of the Applicant. She stated that a Union, upon registration, should submit an application, two copies of their Rules and a statement of particulars. A certificate is issued upon registration of the Union. The UPSEE was registered on 16 June 1976 and she produced the Certificate of Registration of the then Union of Private Secondary School Teachers (Document A). She also produced the Rules of the Union of Private Secondary School Teachers (Document B), referring the Rule 3 (a) thereof. The name of the Union of Private Secondary School Teachers was amended on 2 April 1979 to UPSEE and she produced a Certificate of Change of Name to this effect (Document C) together with an attachment showing the amendment to be made (Document C₁). A Certificate of amendment regarding entrance and monthly fees was issued on 4 July 1983 (produced as Document D) and the attachment showing the amendment was produced as Document D₁. A Certificate was issued on 3 May 1984 regarding an amendment to Article 3 of the Rules adding a new paragraph (f); and she produced the Certificate of Amendment together with the copy of the amendment (Documents E & E₁).

 Mrs Junkeesaw-Sunjhoreea also stated that the application for amendment, under the *Industrial Relations Act*, needs various signatures who are members of the Union. There was an amendment to Articles 4, 10 and 11 of the Rules and a Certificate was issued on 24 October 1988; she produced same together with the amendment attached (Documents F & F₁). Another Certificate was issued on 9 November 1994 regarding an amendment to entrance fees and monthly contribution; same was produced together with the attached amendments (Documents G & G₁). On 27 April 1999, there were amendments to Article 7 & 19 (b) of the Rules; she produced the Certificate together with the amendment attached (Documents H & H₁). She confirmed that when Certificates are issued, the amendments become new rules to the amended Rules. On 19 January 2004, there was an amendment made to the Executive Committee, Article 8; she produced a copy of the Certificate together with a copy of the amended rules (Document I & I₁). A Certificate was issued on 28 September 2007 amending Article 5 of the Rules; she produced same together with the proposed amendment (Documents J & J₁).

The witness also stated that she has been producing a set of amendments with the Certificate issued together with a partial amendment meaning only that part of the amendments of Rules has been amended. Before amendments to the *Act*, there was a practice to submit the annual copy of the Rules duly signed by seven members where the proposed amendments were highlighted. This was submitted by the Union. There was an amendment to Article 17 of the Rules and she produced the Certificate dated 8 July 2011 together with the accompanying amended rules (Documents K & K₁). There were amendments to the membership clause, entrance fee and monthly subscription on 10 April 2012 and she produced the Certificate dated 19 April 2012 and the proposed amendment (Documents L & L₁). The membership clause was amended on 10 August 2012 and she produced the Certificate dated 16 August 2012 and the amended rules (Documents M & M₁). There was an amendment to entrance fee and subscription and she produced the Certificate dated 10 October 2023 together with the proposed amendment (Documents N & N₁).

Referring to the Rules attached as Annex 8 to the Co-Respondent’s Statement of Case, Mrs Junkeesaw-Sunjhoreea confirmed that the document emanates from her Office and was received when the membership clause was amended and a Certificate was issued on 28 September 2007, which is Documents J & J₁. This is not the official Rules, the official one is the one submitted at the time of registration. Upon an application by a member of the UPSEE, a copy is issued to the member upon payment. The document was not issued to the Union. No document was issued to a member of another Union. All amendments that have been submitted in respect of all Articles have been produced. There is no amendment to Article 3 (a) as per her reports. According to official records, Article 3 (a) reads as the initial one.

 Mrs Junkeesaw-Sunjhoreea was questioned by Counsel for the Respondent. She notably stated that the application dated 7 October 2024 was triggered by an application made by the Co-Respondent, a complaint made by the Co-Respondent regarding Article 3 of the Rules. In their application, the Co-Respondent says that the present application was obtained by fraud or misrepresentation. She confirmed that there is no fraud or misrepresentation on behalf of the Respondent.

 The witness was also questioned by Counsel for the Co-Respondent. She notably stated that the present application for cancellation of registration of the UPSEE was made on 7 October 2024 and the basis of the application was the representation made to them by the Co-Respondent. Upon the application of the Co-Respondent, the Respondent was informed to show cause; then the application was made to the Tribunal. The application was made following the law and under *section 7 (3)* of the *Act*. She identified the seal of UPSEE on Annex 8 of the Co-Respondent’s Statement of Case. The seal of UPSEE on Documents M₁, L₁, K₁ and J₁ is the same as the seal of UPSEE on Annex 8. There is no seal of UPSEE on the Rules produced as Document B, which is for the Union of Private Secondary School Teachers.

Mrs Junkeesaw-Sunjhoreea moreover agreed that the 13 amendments must be consolidated in the Rules. When the law was amended to the *Act*, there was no requirement to submit consolidated rules; under the *Industrial Relations Act*, one of the requirements was to submit a copy of the Rules to show where and what rules are being amended. The amendments are not consolidated in Document B which she produced. She read out the object in Article 3 (a) of Annex 8. There is a difference between Article 3 (a) in Annex 8 and Article 3 (a) in Document B. Annex 8 is not according to the initial Rules of the Union. She agreed that if one of the objects of a trade union is not to regulate relations between employers and employees, it cannot be registered; but she referred to the initial Rules. She is here because of the procedure under the law. She has reports in her file as to whether the amendments made were approved by an Annual General Meeting. Regarding whether the amendments were approved by an Annual General Meeting, she stated that a Certificate was issued. For the initial Rules, you have to apply for registration of the Union. The initial Rules must be approved at the general meeting among members not necessarily an Annual General Meeting.

 When re-examined by her Counsel, Mrs Junkeesaw-Sunjhoreea notably stated that there is no legal requirement to consolidate the Rules with the amendments. If the whole Rules were amended, there would be another set of Rules with Certificate of complete amendments. She confirmed that she filed all the amendments made at the Registrar. It should be noted that the Respondent and Co-Respondent did not adduce any evidence.

*THE SUBMISSIONS OF COUNSEL*

 Learned Principal State Counsel for the Applicant notably submitted that this application has been triggered by a complaint made by another trade union under *section 7 (2)(a)* of the *Act*. Whether the Union fails to show cause or where there is an objection, the same rules apply and the Registrar shall apply to the Tribunal for cancellation. The matter is before the Tribunal to decide on whether or not there should be cancellation. The Co-Respondent is relying on Annex 8 of its Statement of Reply, whereby Article 3 (a) of the Rules lacks some wordings when referring to the relationship between the worker and the employer. It is contended that the cancellation must be triggered on the ground that this was obtained by fraud. All amendments together with their Certificates have been produced by the Registrar. Annex 8 is not the doing of the Registrar but is a document that was received by the Registrar. The original set of Rules is the one produced by the Registrar filed at the time the Union was registered. Annex 8 falls within the date of the amendment to the quantum of membership in 2007 (Documents J & J₁). This has nothing to do with the amendments to Article 3 (a) and this document cannot form any basis to say that there has been any amendment to the Rules or that the registration was obtained by fraud.

 Learned Counsel for the Respondent notably submitted that he fully supports the submission of his Learned Friend for the Applicant. He moreover stated that he cannot find any provision in the previous *Industrial Relations Act* which requires consolidation of the Rules; and a requirement for the Trade Union to have Rules updated as and when they are amended. He referred to *section 12* of the *Act* on amendment of rules for change of name. Numerous amendments have been produced and none of the amendments affect the contentious rules as suggested by the Co-Respondent.

 Learned Counsel for the Co-Respondent has notably referred to Document B in his submissions, where Article 27 provides that all amendments must be approved by a General Meeting and no evidence has been produced with regard same approving all these amendments. Secondly, the application has been made under *section 7 (3)* of the *Act* and the Registrar should have gone through the file of UPSEE and seen the initial Rules. They should have rejected it and not come before the Tribunal. His point is that for unknown reasons the Registrar has applied on 7 October 2024 for cancellation and now they produce Document B which does not tally with Annex 8, which they have communicated. There are a second set of Rules dated 2003 which reads the same as Annex 8. The Registrar is circulating Rules that are not in conformity with the law as provided with regards to the Trade Union.

*THE MERITS OF THE APPLICATION*

 The present application has been made by the Registrar of Associations, under *section 7 (3)* of the *Act*, for the cancellation of registration of the UPSEE. This application has been triggered by a compliant made by the Co-Respondent Union to the effect that the registration of UPSEE was obtained by fraud or misrepresentation. As per the application, it has notably been averred that UPSEE’s registration does not align with the definition of a trade union; the *Act* provides that a trade union should have as one of its objects, the regulation of relations between workers and employers; and by virtue of Rule 3 (a) of the UPSEE’s Rules, one of its objects is the regulation of relations between members and workers.

 The Applicant was the sole party to adduce evidence before the Tribunal. As per the Applicant’s representative, the Rules of the then Union of Private Secondary School Teachers was produced (Document B). It must be noted that this Union changed its name to the UPSEE as witnessed by a Certificate of Change of Name dated 2 April 1979. The following can be noted from Article 3 ‘*Objects*’ of the Rules of the UPSEE:

 *The objects of the Union shall be :*

1. *To regulate relations and settle disputes by conciliatory methods whenever possible between the members and their employers and, whenever necessary, between the members and other workers;*

It should be noted that despite the numerous Certificates of amendments pertaining amendments made to the Rules of the UPSEE that have been produced during the course of the hearing, there have been no amendments made to the aforementioned Article 3 (a) of the Rules. A purported copy of the Rules, attached as Annex 8 to the Co-Respondent’s Statement of Case, was put to the Applicant’s representative when questioned by Counsel for the Co-Respondent. The annexed Rules notably shows a different wording to Article 3 (a), whereby it is stated that the object of the Union shall be to ‘*regulate relations and settle disputes by conciliatory methods, whenever possible between the members and other workers*’.

 However, it must be noted that the Applicant’s representative and witness clearly stated that Annex 8 is not the official version of the Rules, the official one being submitted at the time of registration. She moreover confirmed that Article 3 (a) reads the same as in the initial Rules (Document B). She also stated that there has been no fraud or misrepresentation on behalf of the Respondent. When questioned by Counsel for the Co-Respondent, she notably stated that there was no requirement to have consolidated rules under the present *Act*, whereas under the former *Industrial Relations Act*, there was a requirement to submit a copy of the rules to show what is being amended. She also maintained that Annex 8 is not according to the initial rules of the Union.

 Having ascertained that Article 3 (a) of the Rules has not been amended, it is clear that the objects of the UPSEE is in line with the definition of a trade union under *section 2* of the *Act*, which reads as follows:

 *"trade union" –*

*(a) means a registered association of persons having as one of its objects the regulation of employment relations between workers and employers;*

 Thus, it cannot be said that the UPSEE has obtained its registration by fraud or misrepresentation as its objects as stated in Article 3 (a) has remained unchanged as from the time of its registration as the Union of Private Secondary School Teachers in 1976 and clearly provides for the regulation of relations between members and their employers.

The Tribunal has taken due note of the submissions of Counsel for Co-Respondent, who notably stated that the Applicant should have, after going through the file and perusing the initial Rules, rejected the application and not come before the Tribunal. Suffice it is to say that under *section 7 (3)* of the *Act*, where the trade union fails to show cause or objects to the application for cancellation under *section 7 (2)* of the *Act*, it is mandatory for the Registrar to apply to the Tribunal for cancellation.

Counsel for the Co-Respondent has also stated that all amendments must be approved at a General Meeting and that no evidence has been produced with regard to same. It should be noted that the Applicant’s representative did state, when questioned, that she did have reports in her file as to whether the amendments were approved in an Annual General Meeting and also stated that the initial Rules must be approved at a general meeting among members, not necessarily an Annual General Meeting. In any event, the various Certificates of Amendment produced do not pertain to Article 3 (a) of the UPSEE’s Rules.

 Having considered the evidence on record as well as the submissions of Counsel, the Tribunal cannot be satisfied that the UPSEE’s registration must be cancelled pursuant to present application made under *section 7 (3)* of the *Act*.

 The application is therefore set aside.

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**(SD) Shameer Janhangeer**

**(Vice-President)**

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**(SD) Anundraj Seethanna**

**(Member)**

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**(SD) Chetanand K. Bundhoo**

**(Member)**

**..........................................**

**(SD) Divya Rani Deonanan (Mrs)**

**(Member)**

**Date: 10th February 2025**