

SUPREME COURT
FIJI REGISTERED PORT WORKER'S UNION

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v.

REGISTRAR OF TRADE UNIONS

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[SUPREME COURT, 1979 (Mishra, J.), 7th June]

Appellate Jurisdiction

Application for registration of new Union—members interests not adequately represented by existing Union. Application granted.

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G. P. Lala for Appellant.

J. R. Flower for Respondent.

Appeal against a decision of the Registrar of Trade Unions (Registrar) refusing to allow registration (applied for 21 June, 1978) of the appellant Union. The Court accepted that the Registrar erred in holding that another Union the Waterfront Workers and Seamens Union (Waterfront Workers) adequately represented a substantial proportion of the interests in respect of which registration was being sought. It appeared there was a substantial conflict of interests between the members of the appellant Union and those of the Waterfront Workers. The Court noted that under the Trade Union Unions Ordinance registration was compulsory; failure to obtain it results in dissolution. The Registrar was required to register every Union which complied with the requirements for registration and applied for it; so he might refuse it only if one of the seven grounds of the Ordinance Section 13(1) existed. Here the Registrar refused upon the basis that another Union adequately represented the substantial proportion for the interests in respect of which the appellant had sought registration. The Court referred to the distinction between registered and casual dockworkers. It appeared the "registered" workers as to work available got priority; the casuals only got the "spillover" when there was more work than the "registered" workers could handle; yet the number of casuals exceeded the registered workers.

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The Court found—

- (1) That the appellant's members feared a possible loss of their permanent status; and that they would jeopardise their privileges if they were forced to join the Waterfront Workers. G
- (2) That despite efforts no amendments had been made to the constitution of the latter to guarantee members of the appellant privileges and conditions they now enjoyed.
- (3) At a meeting on 28 June, 1978 of members of the appellant 202 members had refused to have anything to do with the existing Union. 52 votes were informal. H
- (4) Interests of the members of the two Unions were "anything but identical": they were mutually hostile.

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- A (5) There were special interests which the appellant was anxious to protect which could only be protected by separate registration.
- (6) The interests of the appellant's members were purely economic which they feared would be destroyed if they joined the larger union.
- (7) It was difficult to accept or reconcile that the existing Union would take steps to allay the fears of those members.

B The Court found that the Registrar had erred in holding that the Waterfront Workers adequately represented a substantial proportion of the interests for which registration was sought by the Appellant.

Held: Appeal allowed. Registrar's decision set aside. Ordered that appellant be registered in accordance with the provisions of the Trade Union Ordinance.

C Cases referred to:

Association of Professional Engineers, Australia and Profession Officers Association and Ors. (1952) C.A.R. 151.

Education Administrators and Teachers Educators Association (Civil Appeal No. 14/1974).

D MISHRA, J.:

Judgment

E The appellant on 21st July 1978 applied for registration under the Trade Unions Ordinance. A copy of the appellant's Constitution is filed as Exhibit C annexed to the respondent's affidavit. No copy of the application itself has been filed.

F "9. That on the 20th day of September 1978, acting upon the advice of the Trade Unions Advisory Committee, I refused the application for registration of Fiji Registered Port Workers Union under the provisions of the Trade Unions Act on the ground that there is already in existence a registered trade union, namely, the Fiji Waterfront Workers and Seamen's Union which adequately represents a substantial proportion of the interests in respect of which registration had been sought."

The Fiji Waterfront Workers and Seamen's Union referred to in the paragraph was registered on 28th April 1978.

G Appellant appeals under section 16 of the Trade Unions Ordinance against the decision of the Registrar of Trade Unions. Both parties relied on affidavits and other documents filed by them and led no oral evidence.

H The appellant has put forward eleven grounds of appeal. The substance of several of these grounds may be stated as amounting to an allegation that there is such a vital conflict between the interests of the members of the appellant Union and those of the other Union that the appellant's interests can never be adequately represented by the other Union. In addition, the grounds allege that the Registrar failed to exercise his discretion properly by merely "acting upon the advice of the Trade Unions Advisory Committee" and not satisfying himself of the adequacy of that advice as required by section 13 of the Act. Ground 11 challenges the validity of section 13(1)(e) of the Trade Unions Act on the ground that it is repugnant to the provision of section 13(1) of the Constitution of Fiji.

Under the Trade Unions Ordinance registration is compulsory. Failure to obtain registration automatically results in dissolution. The Registrar of Trade Unions is required to register every trade union which complies with the requirements for registration and applies for it. He may refuse registration only if any of the seven grounds specified under section 13(1) of the Ordinance exist. In the instant case registration was refused under section 13(1)(e) of the Ordinance. It reads:

"13.(1) The Registrar may refuse to register any trade union if he is satisfied that—

(e) any other trade union already registered is adequately representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration:

Provided that the Registrar shall, by notice in the Gazette or otherwise, notify any registered trade union which appears to him to represent the same interests as the applicants of the receipt of such application, and shall invite the registered trade union concerned to submit in writing within a period of twenty-one days any objections which any such trade union may wish to make against registration;"

Before exercising his power under section 13 of the Ordinance the Registrar has to consult the Advisory Committee constituted under section 3 which consists of one representative of the employers, one of the employees and two independent persons. It is obvious from the papers before the Court that the Committee's advice in the instant case was in favour of refusal.

The task of this Court has been made difficult because of the insufficiency of evidence before it. Reference has been made to an appeal to this Court by the Education Administrators and Teacher Educators Association (Civil Appeal No. 14/1974). In that case the Court had the advantage of hearing a great deal of oral evidence in addition to the affidavits filed by the parties and was in a much better position to decide the basis upon which the Registrar's powers had been exercised. In this case the parties rely entirely on the few documents filed by them which are anything but adequate to give a detailed picture of the basis upon which the members of the existing Union and those of the appellant Union function as dock workers.

All this Court knows is that the members of the two Unions are all dock workers, some being registered the others casual. How a dock worker happens to become "registered" is not known. Whether there are such "registered" dock workers at other ports of Fiji and whether they are organised in separate unions is also not known. It may well be that the Advisory Committee and the Registrar had evidence before them which is not before this Court. This Court, however, must confine itself to the evidence that the parties have chosen to place before it. According to this evidence a "registered" dock worker's position is more or less secure until he is sixty years of age when a pension becomes payable. Whenever work on the Suva Wharf becomes available a "registered" dock worker has priority over the casuals and no work can be made available to the latter until every "registered" dock worker present and offering to work has been employed. It would appear therefore that the casuals at Suva only get the spill-over when there is more work than the registered dock workers can handle. The number of casual workers seeking work at the Suva Wharf is much greater than the number of the registered dock workers. In view of the

A employment situation in the country this is hardly surprising, submits counsel for the appellant, and it is this concern for guaranteed employment that lies at the root of the appellant's desire for separate registration.

At the hearing of the appeal it became clear that what the members of the appellant Union seemed to fear most was the possible loss of their permanent status which in turn would jeopardize their privileges and working conditions if they were forced to join the bigger existing Union. There was nothing in the documents filed to indicate positively in what respects members of the appellant Union differed from those of the existing Union. Counsel were therefore asked if they could make an agreed statement which would particularise privileges and conditions which make the members of the appellant Union a distinct group and which do not extend to the casual workers who are members of the existing Union. Counsel for both parties agreed that a permanent dock worker, that is to say, a member of the appellant Union—

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- “(i) has a 40 hour guaranteed pay per week, work or no work;
 - (ii) has to report every morning for work Monday to Saturday;
 - (iii) has first preference over casual workers when jobs are available;
 - (iv) has to produce a medical certificate if sick, is entitled to 12 days sick leave per year with pay;
 - (v) is entitled to fourteen days annual leave with pay;
 - (vi) is entitled to a pension at the age of 60.”
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E From the correspondence exhibited to the respondent's affidavit (Exhibits D, E and F) it seems that some efforts was made to have amendments made to the Constitution of the existing Union which would guarantee to the members of the appellant Union the privileges and conditions now enjoyed by them. No such amendment seems to have been effected and no proposed amendment has been filed with the respondent's affidavit. Exhibit F to the affidavit shows that at a meeting held by the members of the appellant Union on 28th June 1978, 202 members refused to have anything to do with the existing Union and only six indicated their willingness to join it. Fifty two votes were informal. There the matters seemed to have come to a rest. On 21st July 1978 the appellant Union applied for separate registration.

F Paragraph 13 of the affidavit sworn by Josaid Dinai, the Secretary of the appellant Union on 14th December 1978 suggests that a resolution was passed at a meeting of the existing Union seeking to abolish the privileges attaching to the “permanent” status of the members of the appellant Union and the affidavit refers also to a continually increasing membership of the existing Union which in July—September 1978 seemed to have stood at 2,000.

G Whether separate categories of registered and unregistered workers are desirable within the same class of industrial activity is not a matter for this Court to consider. It may well be that the employers in this case consider a necessary minimum of readily available labour to be a vital requirement for the efficient running of the Suva port, hence the formation of a group of registered dock workers who are required daily to report for work in exchange for certain special privileges. Be it as it may, there can hardly be any doubt that, so far as the scope of employment is concerned, the interests of the “permanents” and those of the “casuals” are, of necessity, mutually hostile. This view is supported substantially by the effort on the

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part of the existing Union, through the resolution referred to in the appellant's affidavit, to deprive the members of the appellant Union of its "permanent" and privileged status. A

From Exhibit E filed with the respondent's affidavit it appears that at some stage the officers of the appellant Union were content to leave the issue of guaranteeing the special position of their members in the hands of the Registrar who apparently was to suggest certain entrenched provisions by way of amendment to the Constitution of the existing Union. The appellant Union, however, has since withdrawn from that position. From Exhibit F to the same affidavit it would appear that the members of the appellant Union by a big majority later decided that it would be contrary to their vital interests to join the existing Union. According to counsel they have persistently refused to do so and there is nothing to suggest that they will ever join the existing Union even if their appeal were dismissed. B

As Kelly C. J. and Wright J. said in *Association of Professional Engineers, Australia v. Professional Officers Association, Commonwealth Public Service and Others* (1952) 73 C.A.R. at page 151 quoted in "Trade Unionism in Australia" by Foerander at p. 44: C

"It is unnecessary, even if it were possible, to set out a list of the kind of considerations which might reasonably be regarded by the members of an association as of sufficient importance to warrant its separate registration. Their significance may be what may be termed negative as well as what may be termed positive. For instance, it might reasonably be regarded as being in the industrial interest of the members that they, in their proposed organisation, should dissociate themselves from some chosen or well-known industrial policy of the existing organisation. Again, there might be reasonable grounds for a claim that their interests would be in danger of being submerged, neglected or not given sufficient attention by the existing organisation because of the rules of the latter or because of the numerical weakness in which the members of the association would find themselves, if they were forced to join the already registered organisation, in the councils of the whole. Another relevant consideration might be that the occupations of the members of the applicant association are supervisory of those of the members of the existing organisation, or yet another, that the members of the applicant have some community of interest which could be destroyed or weakened or not adequately advanced if they found themselves swallowed up in the larger membership of the registered body. It is, of course, necessary that the desire to have an association and an organisation of their own, expressed by the members of the applicant must be a reasonable—what has been termed a 'valid'—one: it must be put forward upon reasonable grounds." D E F G

Where the interests of two organisations are more or less identical, it is undoubtedly undesirable to allow competing unions to be separately organised, as that almost invariably has an unhealthy and unsettling effect on the industry to which the members of such unions belong. In the present case, however, interests of the members of the two Unions, despite the identical nature of their work, are anything but identical. In fact, as I have said, they are mutually hostile. H

A Learned counsel for the respondent referred to an appeal to this Court by the Education Administrators and Teacher Educators Association (*supra*) in which this Court had upheld the Registrar's decision to refuse separate registration to that Association. Members of that Association had been members of two teachers' unions and Public Service Association and had tried to break away from those registered Unions and to form their own association. The reason for that desire was the failure of the Unions of which they were then members to persuade the Government of Fiji to accept certain demands of theirs. Giving its decision this Court

B said:

C "Its failure to have the recommendations of the appellant group accepted without delay by the Government does not in my view affect the characters of the Association as a union adequately representing various groups within the Public Service including the education officers. The same would be true of the two Teachers' Unions with regard to the members of the Nasinu Training College staff. No evidence has been led to suggest that these teachers' unions are either indifferent, or hostile, to the special interests of the members of the Nasinu Training College Staff or that they are unable adequately to represent them."

The Court, however, went on further and said:

D "The system of education in this country is growing rapidly both in its size and in its scope and it is conceivable that certain groups within the system may in time acquire special interests relating to their status, or their specific needs, which may be somewhat in conflict with interests of the general membership of the three unions referred to in this judgment. In such a case, separate representation for them may become necessary and desirable under the Trade Unions Ordinance."

E In the instant case there are undoubtedly special interests that the appellant Union is anxious to protect and which, they think, can only be protected by separate registration. These special interests are not professional or vocational. In fact, the members of the appellant Union do not lay any claim to any special skill. Their interests are purely economic which they fear will be destroyed, or at any rate eroded, if they were to join the larger Union in which they would be swamped by

F mere numbers and which will consist largely of a kind of worker interested in acquiring an equality calculated to strike at the very roots of their privileged and secure employment.

Paragraphs 10(b) and 10(c) of the respondent's affidavit are in following terms:

G "10. That the facts of which I had knowledge when considering the application were:—

(a)

(b) That Fiji Waterside Workers and Seamen's Union, in order to ensure representation of sectional interests had agreed,

(i) to include in their Constitution a provision to protect the present working conditions of the members of the appellant Union and to obtain their consent in any issue which may affect their working conditions or terms of employment.

H (ii) to permit the appellant Union to have two representatives on the executive committee, one of whom could be assistant treasurer.

- (iii) to permit the appellant Union to have one further representative on the executive committee on behalf of the Seamen members. A
- (iv) that all expenditure would have to be either agreed to at a meeting of the executive committee, or notified at the following committee meeting of the executive committee to ensure that all members would be aware at least on a bi-monthly basis of all expenditure incurred or proposed.
- (c) That previously the members of the Fiji Waterfront Workers and Seamen's Union and the members of the appellant Union had enjoyed common union membership without any apparent friction." B

With regard to paragraph 10(c) it would have been of considerable assistance to the Court if it had some evidence before it of how such conflicting interests were adequately represented during the time of common membership. According to paragraph 6 of that affidavit, it seems that even at that time there were two trade unions representing dock and waterside workers and that they were both accorded registration despite identical membership clauses in the two constitutions. C

As for the appellant Union and the existing Fiji Waterfront Workers and Seamen's Union, their membership clauses are anything but identical. While the existing Union's membership clause is wide enough to include the members of the appellant Union, the membership of the latter Union is confined exclusively to dock workers registered with the Ports Authority of Fiji in the port of Suva. D

Paragraph 10(b) referred to above shows the extent to which the existing Union is willing to go to allay the appellant Union's fears. This Court, however, finds it difficult to reconcile the contents of that paragraph with those of paragraph 12(a) of Josaia Dinai's affidavit sworn on 4th December 1978 which is not denied by the respondent. If the existing Union has in fact passed a resolution showing its intention to have the permanent status of the registered dock workers abolished, the basis of the appellant Union's fears would appear to be genuine and the existing Union cannot be relied upon to protect the economic interests of the appellant Union which run directly contrary to its own. E

Paragraph 10(e) of the respondent's affidavit suggests that, when the appellant Union's application was being considered, the Registrar knew:

- "(e) That the members of the appellant Union would be advised by their executive to join Fiji Waterfront Workers and Seamen's Union if they could ensure that they were given the posts of President and General Secretary therein." F

Exhibits F and G annexed to that affidavit which are the final two letters received from the Secretary Permanent Dockers Committee, however, clearly indicate that any possibility of a satisfactory solution to the problem had by then come to an end. If the views expressed in the letters were not shared by the executive of the appellant Union, the Court should have had some evidence of it. In the absence of such evidence, I must assume that by the end of June 1978 the appellant Union, both its executive and its general membership, had finally come to the conclusion that their interests could not but be injured by joining the existing Union. Their application for registration was refused on 20th September 1978. G

The Registrar of Trade Unions is charged by law with the duty of registering trade unions and has the power to refuse registration when any of the specified grounds exist. Where there is evidence on which he can reasonably infer the exist- H

tence of such a ground, this Court should not interfere with the exercise of his power.

- A It may well be that he had before him additional information not made available to this Court. On the evidence, however, as it stands before me, I must accept the appellant Union's submission that the Registrar erred in holding that the Waterfront Workers and Seamen's Union adequately represents a substantial proportion of the interests in respect of which registration is being sought.

- B The appeal is, therefore, allowed and the Registrar of Trade Unions' decision to refuse the appellant Union's application is set aside. It is ordered that the appellant Union be registered in accordance with the provisions of the Trade Unions Ordinance. The appellant Union is also awarded costs of this appeal which will be taxed, if not agreed.

- C In view of the decision I have reached on the main ground, it is not necessary for me to advert to the other grounds which, I may say in passing, do not appear to carry the persuasive weight of the ground on which the appeal has been decided.

Appeal allowed. Order for registration.