

A

MEDICAL ANCILLARY WORKERS ASSOCIATION

v.

REGISTRAR OF TRADE UNIONS

[SUPREME COURT, 1967 (Mills-Owens C.J.), 15th, 26th September]

B

Appellate Jurisdiction

Trade unions—appeal from Registrar—refusal of application for registration—procedure on appeal—merits of application at large for consideration by Supreme Court—applicant unincorporated association—whether Registrar a party—Trade Unions Ordinance 1964, ss.3 (1) (5), 13 (1) (e), 16, 17—Trade Union Act 1913 (2 & 3 Geo. 5, c.30) (Imperial) s.2 (4)—Rules of the Supreme Court 1883, 0.16 r.9—Trade Union Rules 1913 (Imperial) rr.3, 4, 5.

C

Appeal—practice and procedure—no procedural provision in Ordinance—for appellate court to fix own procedure—no restrictive provision in section authorising appeal—appeal at large—Trade Unions Ordinance 1964, ss.3 (1) (5), 13 (1) (e), 16, 17—Rules of Supreme Court 1883, 0.16, r.9—Trade Union Rules 1913 (Imperial) rr.3, 4, 5.

On an appeal to the Supreme Court under section 16 of the Trade Unions Ordinance, 1964, against a refusal by the Registrar of Trade Unions to register the appellant as a trade union, the Court is entitled to examine the application for registration afresh, both on the facts and the law and to arrive at its own conclusion, if necessary substituting its own opinion on the merits of the application.

D

Semble: 1. The Registrar ought to be a party to the appeal but it is for him to consider whether he takes an active part or otherwise.

E

2. If an appellant is an unincorporated association the Rules of the Supreme Court appear to require the proceedings to be commenced in the name of individual members representing the general body.

Cases referred to: *Danish Mercantile Co. Ltd. v. Beaumont* [1951] Ch. 680; [1951] 1 All E.R. 925; *Smith v. Williams* [1922] 1 K.B. 158; 126 L.T. 410; *Stepney Borough Council v. Joffe* [1949] 1 K.B. 599; [1949] 1 All E.R. 256.

F

Interlocutory ruling on application for directions on appeal under section 16 of the Trade Unions Ordinance 1964.

K. C. Ramrakha for the appellant.

M. S. Dhaliwal for the respondent.

G

MILLS-OWENS C.J.: [26th September, 1967]—

This is an appeal against a refusal to register the appellant as a trade union under the Trade Unions Ordinance, 1964. Section 13 (1) (e) provides that the Registrar of Trade Unions, appointed under section 3 (1), may refuse to register any trade union if he is satisfied that —

H

“(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:

A 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-eight days any objections which any such trade union may wish to make against registration;"

B Section 16 provides as follows —

"(1) Any person aggrieved by the refusal of the Registrar to register a trade union, or by an order made by the Registrar under section 14 of this Ordinance, may within one month of the date of the refusal or order, as the case may be, appeal against such refusal or order to the Supreme Court and from (sic) such appeal the Supreme Court may order as it thinks proper, including any directions as to the costs of the appeal.

C (2) The Supreme Court in hearing any such appeal shall have all the powers which it may exercise in the hearing of a civil suit."

D Section 16 follows, generally, the provisions of section 2 (4) of the Trade Union Act, 1913. No procedure is laid down by the Ordinance for the representation of interested parties on the hearing of the appeal, as to the material to be placed before the Court, as to the right (if any) of the Registrar of Trade Unions to be heard, or otherwise as to the manner and form in which the appeal is to be presented, heard and determined. Nor is there, it appears, any rule of the Supreme Court of specific or general application to such proceedings.

E The matter comes on before me today for the purpose of directions being given with respect to the foregoing procedural matters. Mr. Dhaliwal makes the point that although the application was decided by the acting Registrar of Trade Unions the person now holding the office is the substantive holder thereof. If this is an error I would disregard it as a mere error of description, a mere irregularity, which indeed the Registrar of Trade Unions may well have waived by appearance, Mr. Dhaliwal being an officer of the Registrar's department. Of greater importance to my mind is the fact that the proceedings are brought in the name of the

F Association. Section 17 provides that the registration of a Trade Union shall render it a body corporate. Presumably, pending registration the Association is an unincorporated association; at least it is not suggested otherwise in the papers at present before me. If the Association is unincorporated then, it would appear, Order 16 Rule 9* of the Rules of the Supreme Court requires the proceedings to be commenced in the name of individual members as representing the general body of the Association.

G I express no opinion as to whether this implies a fundamental defect in the initiation of the proceedings, a defect rendering the proceedings a nullity ab initio; I am not aware by whose authority they were commenced; and I am not saying that there is any defect which cannot be cured by adoption or ratification (vide *Danish Mercantile Co. Ltd. v. Beaumont and Another* [1951] 1 All E.R. 925). But, clearly, at some stage there must be an appellant who may be made liable in costs to any other party

H if the occasion for such an order arises; clearly also, if the Association is unincorporated, representative proceedings are necessary in order to bind the members.

* See now Order 15 rule 12 — Ed.

Turning to the procedural aspects of the appeal as to which directions are required, there being no rules of Court directly applicable it is for the Court to mould its own procedure (vide *Smith v. Williams* [1922] 1 K.B. 158 at 165). Here I cannot do better than refer to the provisions of the Trade Union Rules 1913 (S.R. & O. 1913 No. 1274), in particular rules 3, 4 and 5 thereof, which read —

“3. The Court may at any stage of the motion direct that the same be served on any persons that the Court may think proper Provided always that, except where the Trade Union or alleged Trade Union in question are themselves the appellants, such Trade Union or alleged Trade Union, or any person who appeared before the Registrar and in whose favour he decided, shall (unless the Court shall otherwise order) be respondents or one of the respondents to the motion.

4. At any stage of the motion the Court may, if it shall appear to be expedient so to do, cause notice to be given by advertisement or otherwise of the time when the motion will be, or is likely to be, heard and disposed of, or otherwise make provision for enabling any persons interested in the Trade Union or alleged Trade Union in question or in the subject matter of the appeal to appear and be heard on the motion.

5. At any stage of the motion the Court may, if thought fit, give any such special directions for the hearing and disposal of the motion either on affidavit evidence or with witnesses or otherwise and generally at such time and in such manner as may be just and convenient.”

These Rules make no reference to the Registrar of Trade Unions being made a party. Before deciding whether to adopt these rules I ought to consider the nature of an appeal under section 16 of the Trade Unions Ordinance, 1964. Mr. Ramrakha argues that the appeal is at large, that the Court may and should enter upon an inquiry as to the facts and the law; the Registrar should not be put in the position of a defendant — that would be as if on an appeal from a Magistrate's Court the Magistrate himself were to be called upon to justify his decision and be open to cross-examination; further what is the record in which the Court is to proceed? Mr. Dhaliwal argues that an appeal lies only within narrow limits; unless it can be shown that the Registrar has failed to comply with the formalities laid down by the Ordinance, such as by omitting to give notice under the proviso to section 13(1) (e) or to consult the advisory committee under section 3 (5), an appeal must be held to be without merit.

Quite apart from authority, I do not think that the narrow view contended by Mr. Dhaliwal can possibly be right. It is to be presumed, surely, that the Registrar will proceed correctly, and if the position is to be that if he proceeds correctly no appeal can succeed the right of appeal becomes nugatory. Further, it would be unnecessary to provide for an appeal merely in order to correct errors in procedure; other means would exist for correcting errors in a case such as this where otherwise the right of combination for legitimate purposes could be entirely taken away. In modern statutes it is common form to limit rights of appeal; sometimes to provide for an alternative to procedure by prerogative order; to limit appeal to a point of law, as e.g. by providing that the appeal shall be by way of case stated; to limit appeals to specific grounds. In the absence of limiting or restrictive provisions, prima facie, the appeal is at large. The words of

A section 16 (1) "the Supreme Court may order as it thinks proper" clearly envisage the exercise by the Court of the widest powers consistent with the justice of the case.

On referring to the authorities I find that these views are in accordance with the decision of the Divisional Court in *Stepney Borough Council v. Joffe* (1949) 1 All E.R. 256. Accordingly I hold that on an appeal under section 16 of the Ordinance the Court is entitled to examine the application for registration afresh, both on the facts and the law, to consider the question whether there is already adequate representation (as in section 13 (1) (e)), and to arrive at its own conclusion; if necessary to substitute its own opinion on the merits of the application. In these circumstances also, as it appears to me, while the Registrar ought to remain a party in case no other Trade Union opposes the appeal, it is a matter for the Registrar to consider whether he takes an active part in the appeal or leaves it to be fought out between the appellant and any unions who might come in to oppose the appeal.

C Subject to anything further that Counsel have to say I propose to give the following directions:—

D 1. That the following Trade Unions be made respondents, namely, the Fijian Government Workers' Union, the Public Employees' Union, the Fiji Public Servants Association, and the Fiji Senior Civil Servants Association;

E 2. That the appellant publish in the Fiji Royal Gazette and the "Fiji Times", in a form to be approved by the Chief Registrar of this Court, not less than 30 days before the appeal is set down for hearing, a notice stating the substance of the appeal and that interested persons or trade unions may apply to intervene and be made parties to the appeal.

3. Liberty to apply.

4. Costs in the cause.

Making of order reserved to Chambers.