



W.P.No.3915 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 04.01.2024

ORDER PRONOUNCED ON : 26.02.2024

CORAM

THE HON'BLE MRS. JUSTICE N.MALA

W.P.No.3915 of 2022

and

WMP.No.4064 of 2022

1. M/s. Shasun Anna Paniyalar Sangam,
Reg.No. 2940 CNI / 163 / CDR,
Rep. by its Secretary Mr.G.Subramanian,
Kudikaadu, SIPCOT, Cuddalore- 607 005.

2. M/s.Solara Pattali Thozhir Sangam,
Reg. No.2151: (MDS)
Rep. by its secretary Mr.Ra. MuthuKumar,
Kudikaadu, SIPCOT,Cuddalore- 607 005.

...Petitioners

Vs.

1. The Commissioner of Labour,
Labour Department, DMS Complex,
Teynampet, Chennai- 18.

2. Joint Commissioner of Labour-2,
DMS Campus DMS Subway, Anna Salai,
Teynampet, Chennai, Tamil Nadu- 600 006.



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3. Assistant Commissioner of Labour,
Dheepan nagar, 1st Street, Semmandalam,
Cuddalore- 607 001.

4. Solara Active Pharma Science Ltd.,
Formerly known as
M/s.Strides Shasun Limited,
Rep. by its General Manager,
Kudikaadu, SIPCOT, Cuddalore- 607 005.

5. M/s.Strides Shasun Thozhilaalar Vazhvurimai Sangam,
Rep. by its Secretary,
Kudikaadu, SIPCOT,
Cuddalore- 607 005.

...Respondents

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the order in Na. ka.En.B2 / 113 / 2022 dated 02.02.2022 passed by 2nd Respondent quash the same and consequently directing the 1st to 3rd Respondents to conduct fresh Election by secret ballot on their representation dated 27.11.2021 as directed by this Hon'ble Court in W.P.No. 7393 of 2020 dated 18.01.2021.

For Petitioner : Mr.S.Tamilselvan

For Respondent : Mrs.Rajarajeswari

Government Advocate for RR1 to 3

Mr.C.M.Mohanasundaram
for R4

Mr.R.Muralidharan
for R5



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ORDER

Writ petition is filed for a writ of certiorarified Mandamus calling for the records of the order in Na. ka.En.B2 / 113 / 2022 dated 02.02.2022 passed by 2nd respondent quash the same and consequently a direction to the 1st to 3rd Respondents to conduct fresh Election by secret ballot on their representation dated 27.11.2021 as directed by this Court in W.P.No. 7393 of 2020 dated 18.01.2021.

2. The right to form associations is a fundamental right guaranteed under Article 19(1)(c) of the Constitution of India. The right of workmen to form association is thus a constitutional right, springs as it is from Article 19(1)(c). Trade Unions are the voice of the voice less, they are formed to espouse the cause of the workmen and to protect their rights given under the various labour statutes. The facts of the present case makes one wonder if the avowed object of protecting the interest of workers is anymore, really a genuine concern? The history of the present litigation coupled with the fact that substantial number of workers (i.e.) 54/305 are not members of any Union, reflects the lack of faith in the Unions. That the individual strength of each of the petitioner's is lesser than the numbers



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who had chosen to keep off the Unions probably in a reflection of lack of faith in any of the Unions, with this preface, let me now see if the grievance of the petitioner's is justified or not.

3. The dispute in this writ petition relates to the declaration of the 5th respondent Union as the recognised Union by the respondents 1 to 3. It is seen that the 4th respondent approached this Hon'ble Court in W.P.No.39167 of 2016 for a Mandamus directing the 1st respondent therein to hold elections as per the code of discipline and declare the Union which should be recognised by it in terms of the criteria the Annexure I of the code of discipline for recognition of Unions. This Hon'ble Court vide common order dated 19.01.2017, issued the Mandamus as prayed for. As per the aforesaid order elections were held on 14.06.2017 by the Labour Officer Cuddalore and the 5th respondent herein was declared as the sole recognised Union for negotiating with the 4th respondent company. The tenure of the 5th respondent expired on 14.06.2019 and thereafter no fresh election was conducted. The petitioner Union aggrieved by the non-conduct of elections filed W.P.No.7393 of 2020 for a Mandamus to declare the petitioner Union as recognised Union to participate in negotiations



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with the 4th respondent. On 18.01.2021, this Court dismissed the writ petition with liberty to the petitioner to pursue his remedy for conduct of election and in such event, it was left to the Commissioner of Labour to take appropriate action.

4. Pursuant to the said order, the petitioner sent representations to the 1st and 3rd respondents on 17.02.2021 and 28.10.2021 respectively to pass appropriate orders for conduct of elections. The 3rd respondent on 27.07.2021 replied to the petitioner that action would be taken for conduct of election. On 12.08.2021, the 1st respondent directed the 3rd respondent to conduct fresh election. The 3rd respondent vide common order dated 18.08.2021, directed the petitioner to submit the list of its members and also to participate in the meeting to be held on 26.08.2021 at 4 p.m. On 26.08.2021, the petitioner submitted the list of its member's and was orally informed that the meeting was postponed. No specific dated was given for the next meeting. As no meeting was conducted even after lapse of 3 months, the petitioner approached the 3rd respondent who informed that the date of election depended on the direction of the 1st respondent. Lateron, the 1st and 3rd respondent conducted a meeting wherein it was



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orally announced that election would not be conducted and the majority Union would be declared as recognised based on the verification of membership. The petitioner vide representation dated 07.01.2022 registered its objections to the oral announcement. Thereafter on 02.02.2022, the 2nd respondent passed the impugned order, declaring the 5th respondent as the recognised Union on the ground that it had the support of 141 members. Aggrieved by the impugned order the petitioner has approached this Court for the aforesaid relief.

5. All the respondents filed their counter supporting the impugned order.

6. The learned counsel for the petitioner submitted that the impugned order was against the order passed by this Court on 19.01.2017 in W.P.No.39167 of 2016. The learned counsel submitted that when the 5th respondent was granted recognition on the basis of election conducted for the purpose in pursuance of the order of this Court, nothing was wrong in the petitioner asking for conduct of elections now. The procedure adopted by the respondents was questionable as the 5th respondent had support of only 70 members but it was declared as the recognised Union on the basis



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that it had support of 141 members. The learned counsel therefore submitted that the impugned order deserved to be set aside.

7. The learned counsel for the respondents relying on the counter's filed by them submitted that as the 5th respondent enjoyed the support of 141 member's it was declared as the recognised Union and hence there were no merits in the writ petition.

8. I have heard all the counsels and I have perused the records.

9. The question is whether the procedure adopted by the respondents 1 to 3 in declaring the 5th respondent as the recognised Union for the 4th respondent company is sustainable.

10. The facts are already narrated and it would suffice to state that earlier also the 5th respondent was declared as the recognised Union in pursuance of an election conducted for the purpose as directed by this Court in W.P.No.39167 of 2016 dated 19.01.2017. On the expiry of the tenure of the 5th respondent, the petitioner filed W.P.No.7393 of 2020 to



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declare it as the recognised Union for the purpose of negotiating with the 4th respondent. The said writ petition was dismissed with liberty to approach the 1st respondent. The petitioner approached the 1st respondent and thereafter the impugned order was passed.

11. It is seen that on 03.01.2022, the 1st respondent constituted the committee to verify the membership details of each of the Unions for the purpose of declaration of recognition to the Majority Union. On 10.01.2022, the said committee submitted its interim report to the 1st respondent. In the interim report the membership of the 5 Unions (1 Union did not submit particulars of membership) was stated as follows:

1. ஸ்ட்ரைட்ஸ் சாசன் தொழிலாளர் விடுதலை முன்னணி
(CDR/310) - 67
2. ஸ்ட்ரைட்ஸ் சாசன் தொழிலாளர் முன்னேற்ற சங்கம் (311/CDR) - 39
3. சாசன் அண்ணா பணியாளர் சங்கம் (163/CDR) - 59
4. பாட்டாளி தொழிற்சங்க பேரவை (சொலாரா பாட்டாளி
தொழிற்சங்கம்) (2151/MDS) - 46
5. ஸ்ட்ரைட்ஸ் சாசன் தொழிலாளர் வாழ்வுரிமைச்
சங்கம் (31/SAV) - 69



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12. It is pertinent to note that even in the interim report it was recorded that the petitioner's wanted secret ballot to be conducted. The final report was submitted to the 1st respondent on 20.01.2022. In the final report the membership details are as follows:

1	ஸ்ட்ரைட்ஸ் சாசன் தொழிலாளர் வாழ்வுரிமை சங்கம்	61
2	பாட்டாளி தொழிற்சங்க பேரவை (சொலாரா பாட்டாளி தொழிற்சங்கம்)	39
3	ஸ்ட்ரைட்ஸ் சாசன் தொழிலாளர் முன்னேற்ற சங்கம்	25
4	ஸ்ட்ரைட்ஸ் சாசன் தொழிலாளர் விடுதலை முன்னணி	55
5	சாசன் அண்ணா பணியாளர் சங்கம்	50
மொத்தம்		230
6	எந்தவொரு சங்கத்திலும் உறுப்பினராக அல்லாதோர்	54
7	ஒன்றுக்கும் மேற்பட்ட சங்கத்தில் உறுப்பினராக உள்ளோர்	21
மொத்தம்		75
ஆக மொத்தம்		305

13. In the final report it was stated that Strides Shasun Thozhilaalar Viduthalai Munnani and Strides Shasun Thozhilaalar Munnetra Sangam had vide letters dated 26.08.2021 & 30.09.2021 expressed their support to the 5th respondent Union. In the report dated 02.02.2022 recommendation was given to declare the 5th respondent as the recognised Union as it had the support of the above said Unions as per the aforesaid letters.



14. It is seen that the respondents have followed the procedure prescribed in the code of discipline. The facts narrated supra would establish that on verification of membership of the various Unions, the membership strength of the Unions was determined. It is to be noted that the petitioner Union's put together have a strength of 89 members, whereas the 5th respondent together with the strength of the supporting Unions has support of 141 members. It is pertinent to note that the only method provided for in the code of discipline is the verification method. It is also relevant to note here that the Hon'ble First Division bench of this Court in *MRF United Workers Union v. Govt. of T.N*, reported in 2009-IV-LLJ 685 (Mad) has clearly held that the verification method is a better option. The relevant extract is as follows:

“.....Alternative to this procedure namely, ballot system, which, although is recommended by the Committee of the ILO, is not accepted in any of the statutes which have been brought to our notice. The recommendations of the Committee can only be respected to this effect that there has to be a collective bargaining agent of the workmen, which is to be a truly and independent representative agent. As far as the methods suggested by the Committee is concerned, it would result into determination on the basis of the facts arrived at a particular point of time, which has not been very much



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appreciated as a proper method. The method of verification on the other hand will show the following of a particular union over a longer period and would definitely be a better option. The other alternative approach is to say that none of the methods is recognized and therefore the choice of the management will prevail. That certainly cannot be permitted in view of the provisions of the fifth schedule of the Act. The Code of Conduct has a force of acceptance of the organizations of the workers and of the Management and also of the Government, and is being followed in different undertakings. Further it is also in tune with the provisions of the different statutes in different States."

15. In Food Corporation of India Staff Union vs. Food Corporation of India (1995 (2) LLJ 272), the Hon'ble Supreme Court countenanced the secret ballot method over check off system. In 1990 (2) SCC 444 (Automobile Products of India Employees' Union vs. Association of Engineering Workers, Bombay and others, the Apex Court preferred the method of verification. In both cases, the preference was based on the facts of the case in the sense that in the former case there was consent on the method of secret ballot and in the later case, the Bombay Act did not provide for the method of secret ballot. In my view therefore the facts of the case should be taken into consideration as also the practise followed in



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the state. The practise in our state is laid down in the code of Discipline as there is no statute like in Bombay.

16. On the facts of the case it is seen that there is continuous strife between the Unions on the issue of recognition. In my view in the said scenario the method of secret ballot may lead to more strife, unrest and unhealthy practises. I am therefore of the view that there are no merits in the writ petition and the same deserves to be dismissed.

In view of the above discussions, writ petition is dismissed. There shall be no order as to costs. Consequentially connected WMP is closed.

26.02.2024

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

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To

The Central Government Industrial Tribunal- cum- Labour Court,
Chennai.



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N.MALA,J.

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Pre-Delivery Order in

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Order Delivered on

26.02.2024