

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.9.2015.

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.15500 of 2015
and
M.P.Nos.2 and 3 of 2015

Bahujan Samaj Trade Union,
rep. by its K.Sankar
General Secretary,
No.51/5, Type II,
OCF Estate,
Giri Nagar, Avadi,
Chennai 600 054.

Petitioner

vs.

1. Director General Ordnance Factories,
Ordnance Factory Board,
Kolkata 700 001.
2. The General Manager,
Ordnance Clothing Factory,
Avadi, Chennai 600 054.
3. All India Anna Employees Union
rep. by its A.Nawab General Secretary,
No.47, Venkatesh Nagar,
Patabiram Chathiram,
Chennai 600 072.

(R3 - impleaded vide order dated
14.9.2015 in M.P.No.4 of 2015)

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the entire records pursuant to the Circular No.12/12/ Verification/2014/A/IR on the file of the 1st respondent dated 31.12.2014 and the consequential Office Order No.1001 dated 2.1.2015 on the file of the 2nd respondent, quash the same and consequently direct the respondents to conduct the entire verification of membership process by Secret Ballot only.

For Petitioner : Mr.L.Chandrakumar for
Mr.G.B.Saravana Bhavan
For R1 and R2 : Mr.G.Rajagopalan,
Additional Solicitor General assisted by
Mr.T.L.Thirumalaisamy, CGSC
For R3 : Mr.A.Deivasigamani

ORDER

By consent, the writ petition is taken up for final disposal.

2. The petitioner is the General Secretary of Bahujan Samaj Trade Union representing the majority of workers in the third respondent organisation and it is also affiliated body of Trade Union viz., All India Bahujan Defence Employees Federation, New Delhi. The petitioner would state that all along, they represented the respondents for secret ballot and also for adopting the democratic method of recognition of trade union as per several dictums laid down by this court as well as by the Honourable Supreme Court and according to the petitioner, only the secret ballot will ensure the democratic form of election. It is further stated by the petitioner that the respondents had colluded with Trade Union which are of political interest and by following arbitrary method of recognising the Trade Unions, they sought to introduce a new systems/procedure in the form of proceedings dated 31.12.2014 and the consequent office order No.1001 dated 2.1.2015 and challenging the same, the petitioner came up with the present writ petition.

3. Mr.L.Chandrakumar, learned counsel for the petitioner, assisted by Mr.G.B.Saravana Bhavan, would submit that by adopting the said procedure as contemplated in the impugned proceedings, each member of the Trade Union is bound to disclose his affinity to become a member of a particular Trade Union and that may not be suitable for the democratic functioning of a particular Union. It is also submitted by the learned counsel appearing for the petitioner that as a matter of fact, all members of the petitioner Union did not oppose the stand of the respondents, but, the problem lies on account of the fact that the affinity to the Trade Union stands exposed or revealed even at the earliest point of time and therefore, prays for quashment of the impugned proceedings.

4. Per contra, Mr.G.Rajagopalan, learned Additional Solicitor General has drawn the attention of this court to the counter filed on behalf of the respondents and would submit that the underlying object of the impugned proceedings is that the individual members should be allowed to opt for one Union/Association from amongst those Unions/Associations only on whose Membership Lists his name appears and in case, the employee opts for a Union/Association on whose list, his name

does not appear, his name will be deleted from all the lists and would not be counted in the membership of any Union/Association and the preference/affinity of members to a particular union is also obtained in the form of declaration which is to be obtained secretly, as per the proforma attached.

5. The learned Additional Solicitor General also invited the attention of this court to the impugned proceedings of the first respondent dated 31.12.2014 and submitted that the said function would be carried out by a designated officer, who shall open the sealed ballot in the presence of the representatives of the Unions/Associations as per the schedule and the affinity of each dual/multiple member would be declared in their presence and the verified membership list as well as the final membership list after assessing the strength of each Union will be given to the Unions and if anybody is aggrieved, they can go for appeal before the appellate authority, who will be constituted by the General Manager of the Factory at the level of Assistant General Manager. It is also contended by the learned Additional Solicitor General that the petitioner Union is having only negligible members and they have not participated in the election/membership verification process for the year 2015 and failed to submit the requisite documents within the stipulated time. The petitioner did not raise any objection on the 2007 membership verification exercise when the same methodology had been adopted and at that time also, the petitioner Union did not participate in the said exercise and therefore, they have forfeited their right to challenge it in the present writ petition. It is further submitted by the learned Additional Solicitor General that all the three recognized Federations have suggested the improvements/modifications whenever required and after thorough discussion and consideration, the impugned circular/proceedings dated 31.12.1994 came to be issued.

6. So far as the prescription of 15% membership for the purpose of recognition itself, it is the submission of the learned Additional Solicitor General that Trade Union Act only provides for registration of Union and modalities and relevant authorities regarding the same and it has no mention of secret ballot at all and the membership verification is required for recognition of unions, which is a departmental procedure wherein departments recognize the unions based on their representative character so as to have need based dialogue on issues of concern and the process of membership verification is not only to establish this representative character, but also to ascribe the name of each individual member to a particular union and also to establish the total individual members which happen to be members of a particular union. The first respondent is Ordnance Factory and Unions are allowed to perform in a democratic manner without any hindrance and hence, prays for dismissal of the writ petition.

7. This court, has carefully considered the rival submissions and the materials placed on record.

8. The dual membership of Unions is not prohibited, but, the respondent Management wants to verify the strength so as to enable them to recognize the Unions based on their representative character so as to have need based dialogue on issues of concern.

9. The secret ballot is also adopted to identify the real members of unions whose names appear in two lists and subsequently, the designated officer shall declare, as per schedule, the affinity of each dual/multiple member in their presence and the verified members as well as final members list after assessing the strength of each union will be given to the Unions. The petitioner association, if really aggrieved by the said exercise, has also a grievance redressal forum in the form of appellate authority which is the General Manager of the Factory.

10. The underlying object of the impugned proceedings appears to enable the Management to recognise Unions, for the purpose of negotiation and to arrive at an amicable settlement in the interest of the organization. It is to be remembered at this stage that the Management is the Ordnance Factory for the military purposes and therefore, they should be free from any trouble or dispute so as to carry out the said important object/activity. In the considered opinion of the court, the fair apprehension expressed by the petitioner has also been taken into consideration and in para 16 of the counter affidavit, it is averred as follows:-

"As regards grounds at Para 8(O) of the Petition, it is submitted that the Clause xiii of the 1st respondent circular is not at all illegal because any registered union is not being deprived from their facilities which are legally protected by the Trade Union Act, Industrial Disputes Act and other relevant Govt. provisions on Union rights in the circular. However, recognised unions are accorded a different status and certain facilities are granted to them because of their representative character, based on MoD instructions. These facilities are available only to unions who are commanding more than 15% membership and are recognised by MoD on account of that. However, this does not confer any right to the union to stall a democratic process for verification of its membership, which is vital for other unions seeking

recognition. The intention of the OFB Circular is to curtail this tendency of sabotaging the membership verification through non-participation and non-cooperation."

11. The respondents also took a stand that the Union members cannot, forever, remain secret and the list of members are also submitted by the Unions alongwith their returns and it is in public domain and the respondents have to go through the process of verification to eliminate the dual membership wherever exist and it is for the sake of clarity as well as membership accounting, which, in the considered opinion of the court, cannot be found fault with.

12. The grievance expressed by the petitioner appears to be that unless a particular Union secures membership of 15% they are not recognized by the Ministry of Defence. It is pertinent to point out, at this stage, that in the absence of any prohibition, it is open to the Management to prescribe such a percentage for the purpose of recognising unions, for negotiation on behalf of the employees.

13. It is also open to the petitioner Union to get that percentage through legal process so as to gain the confidence of the employees and there is no express bar or prohibition with regard to the course to be adopted.

14. This court, after carefully considering the rival submissions and the materials placed, is of the considered view that there is no error or infirmity in the impugned proceedings. There are no merits in the writ petition. Therefore, the writ petition is dismissed. Interim order passed in M.P.No.2 of 2015 is vacated. M.P.No.3 is closed. No costs.

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Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

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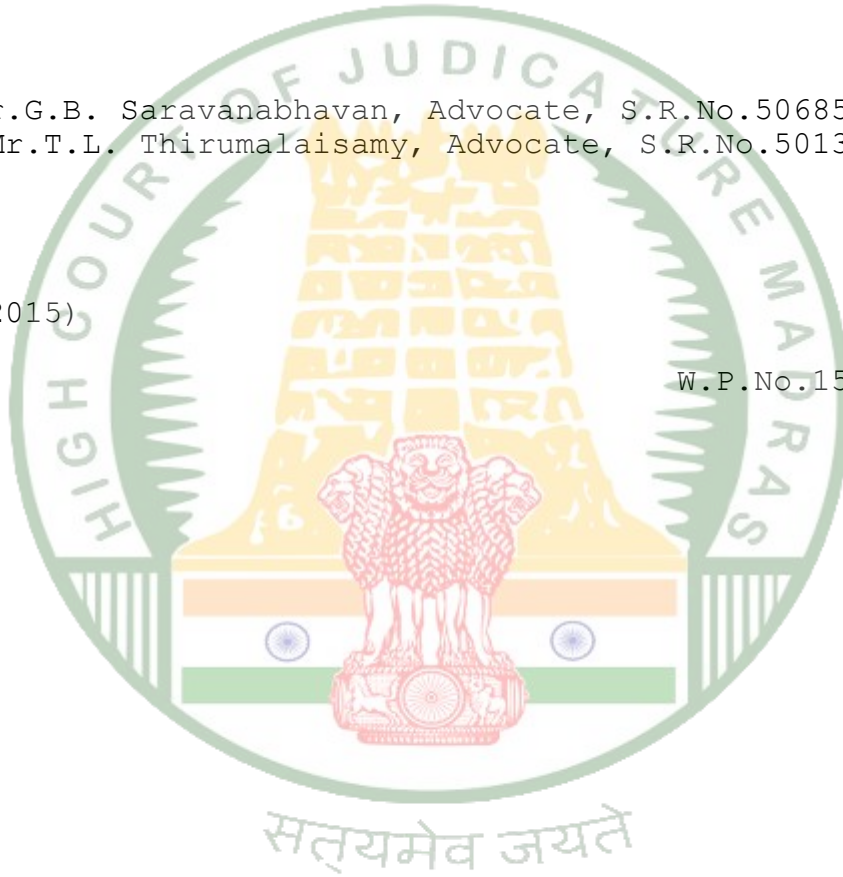
To

1. Director General Ordnance Factories,
Ordnance Factory Board,
Kolkata 700 001.
2. The General Manager,
Ordnance Clothing Factory,
Avadi, Chennai 600 054.

+1cc to Mr.G.B. Saravanabhavan, Advocate, S.R.No.50685
+2ccs to Mr.T.L. Thirumalaisamy, Advocate, S.R.No.50135

SK(CO)
EU(20/10/2015)

W.P.No.15500 of 2015



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