

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM

AND

THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Appeal No.412 of 2012

NLC Jeeva Oppantha
Thozhilalar Sangam,
Affiliated to AITUC,
rep.by The General Secretary,
K.Venkatesan,
D-13, Mahatma Gandhi Road,
Bloc No.24, Neyveli-607 801 ...Appellant

-vs-

1.M/s.Neyveli Lignite Corporation Ltd.,
rep.by its Chairman and Managing Director,
Neyveli Town, Cuddalore District.

2.The Director Human Resources
Neyveli Lignite Corporation Ltd.,
Neyveli Town, Cuddalore District.

3.The Regional Labour Commissioner(Central),
Sasthri Bhavan,
Nungambakkam, Chennai-600 006

4.The General Secretary,
NLC Workers Progressive Union,
D-10, Anna Road, Block 25,
Neyveli Town Cuddalore District.

5.The General Secretary,
NLC Pattali Thozhil Sangam,
K.N.Subbraman Salai,
Block No.19, Neyveli Town,
Cuddalore District

..Respondents

WRIT APPEAL filed under Clause 15 of Letters Patent against the order passed in W.P.No.3222 of 2012, dated 10.02.2012.

Writ Petition filed under Article 226 of Indian Constitution praying to issue a Writ of Mandamus directing the respondents permit the contract workers to participate in the secrete ballot and to receive duly filled in Annexure appended with the letter dated 31.1.2012 from the petitioner and allow the petitioner union to contest in the secrete ballot along with the other trade unions for recognition.

For Appellant : Mr.M.Devaraj

For Respondents : Mr.N.Nithyanandam for R1 and R2
No appearance for R3 to R5

J U D G M E N T

(Judgment of the Court was delivered by
A.SELVAM, J)

This Writ Appeal has been directed against the order dated 10.02.2012, passed in W.P.No.3222 of 2012, by the learned single Judge of this Court.

2. The appellant herein, as petitioner, has filed W.P.No.3222 of 2012, on the file of this Court under Article 226 of the Constitution of India, praying to issue a writ of mandamus directing the respondents to permit the contract workers to participate in the secrete ballot and to receive duly filled in annexure appended with the letter dated 31.01.2012, wherein, the present respondents have been arrayed as respondents.

3. In the petition it is averred that the appellant/petitioner is nothing but a Union of contract workers. The contract workers are doing their service under the management of the first respondent. But they have not been allowed to exercise their right of secret ballot. Under the said circumstances, the present petition has been filed for getting the relief sought therein.

4. The learned Single Judge, after considering the divergent contentions raised on either side, has given a specific finding to the effect that there is no Law or Rule so as to grant the relief sought in the petition and ultimately dismissed the same. Against the dismissal order passed by the learned Single Judge, the present writ appeal has been filed.

5. The learned counsel appearing for the appellant/petitioner has contended with great vehemence to the effect that the appellant/petitioner is nothing but a union of contract workers and they are doing their works under the management of the first respondent, but the first respondent has allowed only recognised Unions to participate in the secret ballot and since the appellant/petitioner has not been recognised, the contract workers have not been allowed to participate in the secret ballot system and the same is nothing but violation of Article 14 of the Constitution of India. Under the said circumstances, the writ petition has been filed, but the learned Single Judge, without considering the bona fide demand of the appellant/petitioner, has erroneously dismissed the writ petition and further, the first respondent has placed some contract workers in certain divisions and since there is a connection between the contract workers and first respondent, such permission has been granted and therefore, the order passed by the learned Single Judge, is liable to be set aside.

6. In order to remonstrate the arguments advanced on the side of the appellant/petitioner, the learned counsel appearing for respondents 1 and 2, has sparingly contended that the appellant/petitioner is not a recognised union and further, the contract workers are being engaged through private contractors and they have no connection whatsoever with the first respondent and further, the relief sought in the writ petition is not based upon any Law or Rule and the learned Single Judge, after considering the over all circumstances available on record, has rightly dismissed the writ petition by way of passing the impugned order and therefore, the impugned order passed by the learned Single Judge does not require any interference.

7. It is an admitted fact that even though the appellant/petitioner has been registered, not recognised by the first respondent. The only relief sought in W.P.No.3222 of 2012 is to direct the respondents to allow the contract workers to exercise their right of secret ballot.

8. In fact, this Court has perused the entire order passed by the learned Single Judge, wherein at paragraph No.3 it is observed as follows:

"3. The counsel for the petitioner is expected to produce any law in favour of the petitioner trade union that provides for a method of granting recognition among several trade unions functioning in the establishment. This question was already considered by a Division Bench of this Court. The relevant paragraph in the Division Bench judgment is extracted hereunder:-

"In the absence of law for recognition of the trade union, the matter based upon administrative order cannot be entertained in the writ petition. This position of law has been clarified by the division bench of this Court presided by A.K.Ganguly, C.J., (as he then was) in K.V.Sridharan and another vs. S.Sundaramoorthy and another reported in 2009 (3) MLJ 1320. It is necessary to extract the following passage found in paragraph No.3 of the said judgment, which reads as follows:-

"3. The said Act does not make any provision for recognition of such a union. Any recognition of union, even if it is union relating to the employees of the Central Government, is governed by some departmental circulars. Those circulars are administrative in nature and not statutory. Therefore, those circulars also cannot be enforced in a writ petition."

The learned Single Judge has rejected the claim of the appellant/petitioner mainly on the ground that the relief is not based upon any Rule or Law.

9. The learned counsel appearing for the appellant/petitioner has relied upon the permission granted by the first respondent, wherein it is stated as follows:

"Now the management has decided to place them back to work in the divisions mentioned below at Mine-IA.

1.Sri.A.Royappan placed to work at EC Bench/Mine-IA

2.Sri J.Jayakumar placed to work at Mini Auto/Mine-IA

and
3.Sri.Selvamani who has been referred by CGM/TA vide Ref.letter dated 03.05.10 is placed to work at Conveyor zone Vulcanising yard of Mine-IA"

10. A mere perusal of the said permission would go to show that the first respondent has permitted certain workers to work in particular places and that itself cannot be a basis for coming to a conclusion that there is a connection between the contract workers and first respondent.

11. It has already been pointed out that even though the appellant/petitioner has been registered, not recognised by the first respondent. It is true that the present writ petition has been filed only to exercise the right of secret ballot by the contract workers. The defence put forth on the side of respondents 1 and 2 is that the contract workers are being engaged by private contractors and they have had no connection whatsoever with the first respondent. Therefore, it is quite clear that the first respondent and the alleged contract workers are not having any privity. Since they are not having any privity, the respondents cannot be directed to allow the contract workers to exercise their right of secret ballot.

12. The learned counsel appearing for the appellant/petitioner has advanced his entire argument only on the basis of Article 14 of the Constitution of India. It has already been pointed out that there is no Law or Rule on which the appellant/petitioner has claimed the right mentioned in the writ petition.

13. At this juncture, the Court has to look into the latin maxim 'Ubi Jus Ibi Remedium', which means, when there is a legal right, there is a legal remedy.

14. It has already been pointed out that there is no connection whatsoever between the appellant/petitioner and first respondent and further, the contract workers are being engaged by the private contractors and they are not having any connection whatsoever with the first respondent. Under the said circumstances, the relief sought in the writ petition cannot be granted.

15. The learned Single Judge, after considering the aforesaid factual aspects, has rightly found that the petitioner/appellant is not entitled to get the relief sought in the writ petition. In view of the discussion made earlier, this Court has not found any force in the contention put forth on the side of the appellant/petitioner and altogether, the present writ appeal deserves to be dismissed.

In fine, this writ appeal is dismissed without cost. The order passed in W.P.No.3222 of 2012 by the learned Single Judge is confirmed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.M/s.Neyveli Lignite Corporation Ltd.,
rep.by its Chairman and Managing Director,
Neyveli Town, Cuddalore District.

2.The Director Human Resources
Neyveli Lignite Corporation Ltd.,
Neyveli Town, Cuddalore District.

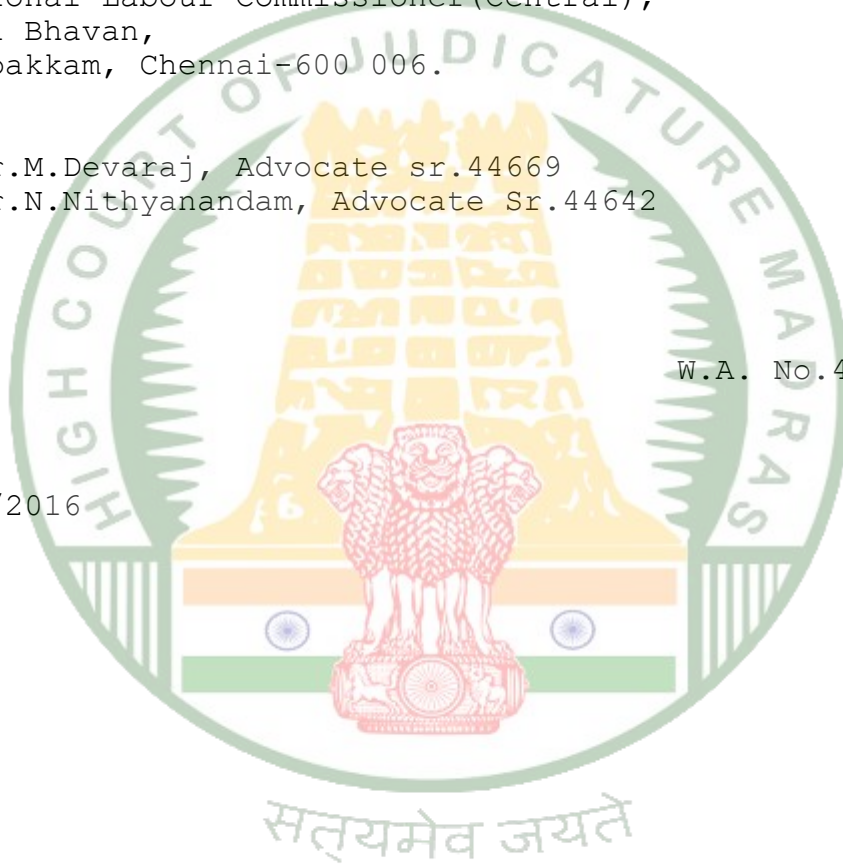
3.The Regional Labour Commissioner(Central),
Sasthri Bhavan,
Nungambakkam, Chennai-600 006.

+1cc to Mr.M.Devaraj, Advocate sr.44669

+1cc to Mr.N.Nithyanandam, Advocate Sr.44642

W.A. No.412 of 2012

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srg 30/08/2016



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