

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.04.2019

Pronounced on : 16.04.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYANW.P.No.1711 of 2012

and

W.M.P.Nos.2,3,7,8 & 9 of 2012

and

W.M.P.No.1 of 2013

Heavy Vehicles Factory
Mazdoor Sangh
Rep.by its, General Secretary,
H.V.F., Avadi, Chennai – 62.

... Petitioner

Vs

- 1.The Secretary,
The Ministry of Defence,
New Delhi.
- 2.The Under Secretary, (JCM)
The Ministry of Defence,
New Delhi.
- 3.The Chairman & D.G.O.F,
Ordnance Factory Board,
Kolkata.
- 4.The General Manager,
Heavy Vehicle Factory,
Avadi, Tiruvallur District.
- 5.Heavy Vehicles Factory Employees Union,
Represented by its General Secretary,
Having office at Avadi Camp (PO),
Chennai – 600 054.

WEB COPY

6.Heavy Vehicles Factory National Workers Union
Regn.No.17/CPT
HVF Estate, Avadi, Chennai – 600 054.

R5 impleaded as per Court order dated 06.12.2012
by DHPJ in MP.5/12 in W.P.1711 of 2012.

R6 impleaded as per Court order dated 10.12.2012
by DHPJ in MP.6/12 in W.P.1711 of 2012.

...Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the entire records pursuant to the order of the 1st respondent in MoD.I.D.No.8(2)/2009/D(JCM) dated 29.12.2011 on the file of the respondent and quash only that portion of the order in clause 7 & 9 and consequently direct the respondents to consider the results of the Secret Ballot held on 03.02.2010 for reconstituting the JCM IV council by recognizing the petitioner.

For Petitioner : Mr.L.Chandrakumar
For G.B.Saravanabhavan

For RR1 to 4 : G.Rajagopalan
Additional Solicitor General,
Assisted by T.L.Thirumalaisamy

For R5 : Mr.Govardhan
For M/s. Row and Reddy

For R6 : Ms.Ramapriya Gopalakrishnan.

ORDER

This writ petition has been filed in the nature of Certiorarified Mandamus, calling for the entire records pursuant to the order of the 1st respondent in MoD.I.D.No.8(2)/2009/D(JCM) dated 29.12.2011 on the file of the respondent and quash only that portion of the order in clause 7 & 9 and consequently direct the respondents to consider the results of the secret Ballot held on 03.02.2010 for reconstituting the JCM IV council by recognizing the petitioner Union.

2. The writ petitioner claims to represent the majority of workers in Heavy Vehicles Factory, Avadi and has also claimed to be affiliated to the Trade Union, Bharathiya Mazdoor Sangh and the Federation, Bharathiya Prathiraksha Mazdoor Sangh. It had been stated that the first respondent namely, the Secretary, Ministry of Defence, New Delhi, has issued an order dated 11.01.2010 for the eligibility of the Employees Unions and etc., for the election process which was scheduled originally on 03.02.2010. The petitioner claimed that elections were held and they had secured 16.39% of the total votes polled and represented the workers of the Heavy Vehicles Factory at Avadi. They applied for recognition status vide representation dated 02.02.2011 through the Chairman and D.G.O.F, Ordnance Factory Board, Kolkata.

3. It was stated that the cut off date for eligibility was unilaterally altered to 03.02.2010 instead of 31.12.2009. The petitioner claimed that this alteration was to enable eligibility of what the petitioner termed as 'puppet' Unions. It was further stated that the order of the first respondent that the verification results of 03.02.2010 shall not be used for recognition/de-recognition of Unions/Associations whose membership were arrived at through secret ballot was a malafide order. It is under these circumstances that the writ petitioner had filed the writ petition seeking to quash the impugned order relating to reconstitution of JCM IV Councils.

4. The petitioner is particularly aggrieved by the following stipulation in the impugned order:

"Unions recognized/fulfilling the conditions for recognition after 03.02.2010 and Service Associations obtaining recognition after 03.02.2010 shall not be allotted seats in the IV level Councils. Such Unions/Associations can try to avail allotment of seats in the next term of the Councils. No Association/Union disaffiliating with any of the Federations/Confederation after 03.02.2010 shall be allotted seats in the JCM Councils."

5. It was also claimed that the order that the verification results of 03.02.2010 shall not be used for recognition/de-recognition of Unions/Associations whose membership was arrived at through secret ballot would imply that the entire exercise is only for academic purposes and consequently the writ petition had been filed seeking to quash the entire impugned order. Subsequently, by order of Court dated 06.12.2012 in M.P.No.5 of 2012, the Heavy Vehicles Factory Employees Union was implemented as the 5th respondent and by order dated 10.12.2012 in M.P.No.6 of 2012, the Heavy Vehicles Factory National Workers Union was implemented as the 6th respondent.

6. This Court had granted an order of interim stay of that portion of the order dated 29.12.2011 in MoD.I.D.No.8(2)/2009/D(JCM) on the file of the first respondent reconstituting the JCM IV level Council. The respondents 5 and 6 have filed application to vacate the interim stay. All the applications are pending.

7. However, during the course of arguments, Mr.L.Chandrakumar, learned counsel for the writ petitioner stated that the petitioner Union is not seeking recognition on the basis of any judicial order or on the pretext of filing this writ petition. However, learned counsel stated that the writ petitioner was entitled to apply to seek recognition from the respondents 1 to 3.

8. Mr.Govardhan for M/s.Row and Reddy, learned counsel for the fifth respondent and Ms.Ramampriya Gopalakrishnan learned counsel for the sixth respondent have seriously disputed this statement. They stated that granting any reliefs to the petitioner would only open the window for the petitioner to seek further reliefs on the issue of recognition. The learned counsels represented that JCM-IV which had been reconstituted by the election dated 03.02.2010 had not been functioning effectively, in view of the order of stay of this Court.

9. In these circumstances, since as on date nearly nine years have passed from 03.02.2010, this Court sought instructions from the first to fourth respondents to find out whether they are prepared to hold fresh elections after due verification of the members for assessing the membership strength of the Unions/Associations. This verification has to be done in accordance with the guidelines issued by the Ordnance Factory Board, Ministry of Defence. Accordingly, an affidavit has been filed on behalf of the respondents 1 to 4. This affidavit is extracted below in entirety for better appreciation:

"I, M.Sivakumar, S/o Late M.A.Moorthy, aged about 53 years, working as Joint General Manager/Admin in Heavy Vehicles Factor, Avadi, Chennai – 600 054, do hereby solemnly affirm and sincerely state as follows:-

1.I am holding the post of Joint General Manager/Admin in

the 4th Respondent's Organization and as a such, I am well acquainted with the facts of the case from the records. I am authorized to file this affidavit on behalf of the Respondents 1 to 4 herein.

2.It is most respectfully submitted that JCM council IV level is not functioning in the 4th respondent factory after the interim stay was granted by this Hon'ble Court by order dated 25.01.2012.

*3.It is most respectfully submitted that at present there would be changes in number of members in each Unions/Associations. Hence in the above said circumstances, if the Hon'ble Court permits then **the exercise of membership verification for assessment of the membership strength of Unions/Associations can be conducted as per the guidelines issued by OFB/MOD. As regards, nomination for JCM IV level for the Unions/Associations at Unit level, seats would be allotted to recognised Union or Unions fulfilling the conditions of recognition.***

4.In view of the above, it is prayed that this Hon'ble Court may be pleased to record the same and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstance of the case and thus render justice."

10. The learned counsel for contesting parties namely, the writ petitioner and the fifth and sixth respondents fairly stated before the Court that the verification process can commence, in accordance with the guidelines issued by the OFB/MOD. The guidelines issued by the OFB/MOD are reads as follows:

**"GUIDELINES ON MEMBERSHIP VERIFICATION OF
UNIONS/ASSOCIATION THROUGH SECRET BALLOT ON
03.02.2010:**

1.Secret Ballot Membership verification is to be conducted for all the registered Trade Unions/Staff Associations other than All India Association of Non Gazetted Officers, National Defence Non-Gazetted Staff Association and All India Ordnance Factories Teaching Staff Association.

2.All the employees upto GP-Rs.4200/- as on 31/12/09 are eligible to participate on the verification other than Chargeman. The membership of Chargeman in the GP of Rs.4200/- to be derived from the Check-off system. Any higher GP granted by virtue of ACP/MACP has to be ignored and the names of such employees also should be included in the Voter List. The names of all such eligible employees (IEs & NIEs) should be in one combined Voter List.

3.The names of all the Registered Trade Unions functioning in the factories irrespective of their recognition status as on 31.02.2009 to be printed in the ballot paper with the name of the Federation to which they are affiliated. The names of the Unions to be printed as per English Alphabetical Order.

4.The names of non-affiliated unions are also to be printed in the Ballot paper.

5.All the recognised and un-recognized Associations existing as on 31.02.2009 to be printed in the Ballot Paper and if they are affiliated to CDRA the same also should be printed on the Ballot Paper.

6.The Symbol being used by the Unions/Associations for Work Committee Elections should be allotted to the Unions for printing in the Ballot Paper. Any Union/Association is not having any such reserved symbol then such union/association may be allotted an independent symbol of their choice other than a symbol of the political parties.

7.Senior GMs/GMs to nominate a Returning Officer at the level of AGM/Jt.GM and the ALWC/DLWC may assist the Returning Officer in the process.

8.The Membership Strength of AIANGOs & NDNGSA under check off system to be restricted only to Ch'man with Grade Pay Rs.4200/- and strength of Asst. Foreman, Store Holder. Foreman (NT) should not be included in the Membership Strength since they are not eligible to participate in the JCM scheme.

9.The Membership verification is only to derive the numerical strength of each Union/Federation and Association/CDRA for distribution of seats in the various JCM Council including IV Level Council.

10.As regards re-constitution of JCM IV level council proportionately based on the numerical strength of the Unions separate instructions would be issued by OFB.

11.EVMs wherever used for Works Committed Elections the same can also be used for the verification purpose.

12.Only the Unions whose registration is up-to-date as on 31.12.2009 are eligible to participate in the verification process.

13.A time table for the verification process and a model Ballot Paper is enclosed."

11. It is to be mentioned that this guideline was issued on 30.12.2009. Accordingly, fresh guidelines may be issued as required keeping in mind the requirements as on date. Thereafter, as stated in the affidavit of Mr.M.Sivakumar, Joint General Manager Admin in Heavy Vehicles Factory, Avadi, Chennai, in the affidavit extracted above "As regards, nomination for JCM IV level for the Union/Associations at Unit level, seats would be allotted to recognized Union (or) Unions fulfilling the conditions of recognition."

12. In view of the above stand of the first to fourth respondents and in view of the fact that the writ petitioner and the fifth and sixth respondents are agreeable for membership verification process to be conducted in accordance with the guidelines extracted above, I hold that the writ petition itself can be disposed of. Accordingly, the writ petition is disposed with the direction to the respondents 1 to 4 to conduct the exercise of membership verification for assessment of the membership strength of Unions/Associations in accordance with the guidelines issued by the OFB/MOD extracted above. Thereafter, nomination for JCM IV level for the Unions/Associations at Unit level, seats should be allotted to recognized Unions or Unions fulfilling the conditions of the recognition. The entire process should be completed on or before 31.07.2019. If necessary, the parties may approach the Court for extension of time. However, it is hoped that the entire process is completed by that date.

13. In view of the above order, the stay which had already been granted by this Court is vacated. The writ petition is disposed of on the above terms. No orders as to costs. Consequently, all connected writ miscellaneous petitions are closed.

16.04.2019

smv

Internet: Yes/No

Index: Yes/No

Speaking Order / Non Speaking Order

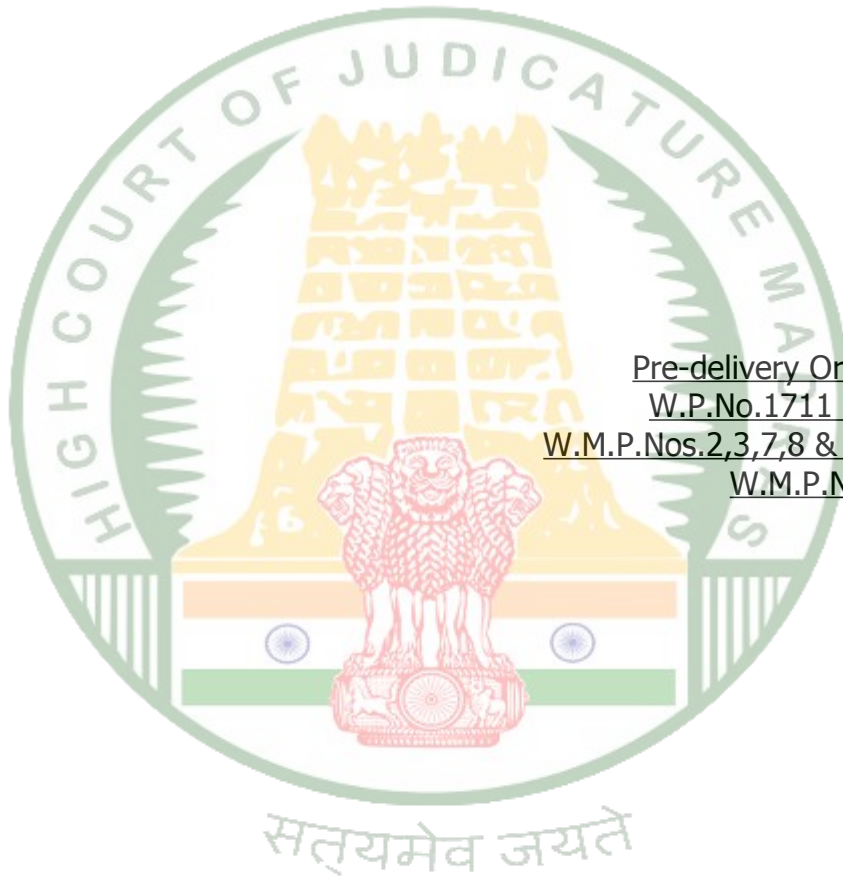
Note: Issue order copy on 22.04.2019

To,

- 1.The Secretary,
The Ministry of Defence,
New Delhi.
- 2.The Under Secretary, (JCM)
The Ministry of Defence,
New Delhi.
- 3.The Chairman & D.G.O.F,
Ordinance Factory Board,
Kolkata.
- 4.The General Manager,
Heavy Vehicle Factory,
Avadi, Tiruvallur District.
- 5.Heavy Vehicles Factory Employees Union,
Represented by its General Secretary,
Having office at Avadi Camp (PO),
Chennai – 600 054.
- 6.Heavy Vehicles Factory National Workers Union
Regn.No.17/CPT
HVF Estate, Avadi, Chennai – 600 054.

C.V.KARTHIKEYAN.J,

smv



Pre-delivery Order made in
W.P.No.1711 of 2012 and
W.M.P.Nos.2,3,7,8 & 9 of 2012 &
W.M.P.No.1 of 2013

WEB COPY

16.04.2019