

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2019

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.20751 of 2019

&

W.M.P.Nos.19913, 19916 & 23843 of 2019

Babu Radhakrishnan

...Petitioner

Vs.

1. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
Bharat Sanchar Bhawan,
Harish Chandra Mathur Lane,
Janpath, New Delhi - 110001.
2. The Deputy General Manager (SR),
Bharat Sanchar Nigam Limited,
SR CELL, Corporate Office,
8th Floor, Bharat Sanchar Bhawan,
Harish Chander Mathur Lane,
Janpath, New Delhi - 110001.
3. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Tamil Nadu Telecom Circle,
No.16, Greams Road,
Chennai - 600006.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the second respondent in his proceedings in File No.BSNL/5-1/SR/2018 dated 02.07.2019 and quash the same.

For Petitioner : Mr.L.Chandrakumar

For Respondents: Mr.S.Udaya Kumar
Senior Standing Counsel

ORDER

The circular dated 02.07.2019 issued by the second respondent is under challenge in the present writ petition.

2. The petitioner - Mr.Babu Radhakrishnan stated that BSNL Employees Union is the largest Trade Union in Bharat Sanchar Nigam Limited. The union is a democratically functioning trade union. The petitioner stated that he is the Circle Secretary of the Tamil Nadu Circle of BSNL Employees Union. The Executive Committee has authorized the writ petitioner to file the present writ petition. Further, the petitioner stated that Membership Verification is being done in BSNL, once in three years, for the purpose of affording recognition. All the Non-Executive (Group C & D) employees will select the Union through secret ballot. So far, 7 Membership Verifications have taken place since the formation of BSNL. Except in the first Membership Verification held in the year 2002, BSNL Employees Union has merged as the number one union in all the remaining 6 Membership Verifications.

3. With this background, the learned counsel for the writ petitioner stated that the circular was addressed to the writ petitioner and he filed the writ petition in his capacity, as the Executive General Secretary of the Employees Union. The learned counsel for the petitioner is of an opinion that the legal actions of the union cannot be interfered with, by the respondent and the legal Strikes or Dharnas, if any, conducted by following the procedures contemplated under the provisions of the Trade Union Act as well as the Industrial Disputes Act, the respondents cannot initiate any further action. The letter dated 09.07.2019 issued by the respondent/Management stated that "In case any agitation/strike programme takes place in contravention of the aforesaid advisory dated 02.07.2019, the complete report along with evidences on it may be furnished immediately to this office for taking further suitable action."

4. Citing the above circular, the learned counsel appearing on behalf of the writ petitioner stated that the respondents are proposing to initiate penal action against the members of the Union Act, therefore, adequate protection is to be provided in respect of the proposed action if any, taken by the respondents against the writ petitioner/Union.

5. The learned counsel appearing on behalf of the respondents, opposed the contentions in entirety by stating that the general circulars would not provide any cause of action for filing of the writ petition. These all are the general circulars issued by the respondent, in order to conduct election in free and fair manner and to provide a level playing field to all the recognized union in equal manner. The respondents are

not having any personal interest in respect of any union and a level playing field is to be provided in order to conduct the election in a more democratic manner.

6. Under these circumstances, certain circulars are issued stating that illegal Strikes or Dharnas cannot be conducted by the Unions and further, if any evidences are furnished then the same may be communicated to the respondent, enabling them to take further suitable action. However, in the circular, it is not stated that the penal action would be initiated. Contrarily, the circular states that the evidences may be communicated for conducting further suitable action. It is a general circular issued and only in the event of identifying any illegality, irregularity or misconduct, then alone, the respondent can initiate action and not otherwise. The legal performance of agitations or canvassing of photos or other activities done by the Trade Unions in a legal manner shall be permitted, enabling them to represent their members.

7. As far as the maintainability of the writ petition is concerned, this Court is of the opinion that the present writ petition is not filed by the union. Though, the common circular issued to all the Unions are under challenge, the present writ petition is filed by one Mr. Babu Radhakrishnan in his personal capacity. Thus, the relief cannot be granted in respect of the members of the BSNL Employees Union, wherein, the writ petitioner is the Circle Secretary. Only if the writ petition is filed in the name of the Union, then alone such a relief can be considered with reference to all the members of the Union and as far as the present writ petition is concerned, the same is filed by the individual and therefore, granting the relief in respect of all the members of the Union would not arise at all. This apart, the circulars are general in nature and no action is initiated against the writ petitioner, so far. In the event of identifying any such illegality, misconduct or findings then alone, the action can be initiated by following the procedures contemplated and not otherwise.

8. With these clarifications, the writ petition stands disposed of. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
Bharat Sanchar Bhawan,
Harish Chandra Mathur Lane,
Janpath, New Delhi - 110 001.
2. The Deputy General Manager (SR),
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3. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Tamil Nadu Telecom Circle,
No.16, Greams Road,
Chennai - 600 006.

+1cc to Mr.S.Udaya Kumar, Advocate sr.78773
+1cc to Mr.L.Chandrakumar, Advocate sr.79874

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nr 11/11/2019