

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2020

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 16924 of 2020 and
W.M.P. No. 21001 of 2020

V.Muthukumaraswamy
M/47, Pattern Shop,
Ashok Leyland Foundaries Division Ennore,
Residing at 6/9, Thangavelu Street, 2nd Lane,
Old Wahsermanpet, Chennai - 600 021. ...Petitioner

-vs-

1. The Commissioner of Labour,
Registrar of Trade Unions,
Labour Department,
D.M.S. Complex, Teynampet,
Chennai - 600 006.
2. Ashok Leyland Employees' Union Foundry Division,
Ennore,
Represented by its President,
389, Thiruvottiyur High Road,
Chennai - 600 019.
3. Ashok Leyland Limited,
Foundries Division, Ennore,
Represented by its Managing Director,
Kathivakkam High Road, Ennore,
Chennai - 600 057. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the first respondent to consider the petitioner's representation dated 14.10.2020 and to see that the election schedule to the second respondent is issued forthwith and election is conducted within the time frame.

For Petitioner : Mr. N.G.R.Prasad
for Mr. R.Thirumoorthy
For Respondents : Ms. R.J.Radhika
Government Advocate for R1
No Appearance for R2 and R3

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the first respondent to consider the petitioner's representation dated 14.10.2020 and to see that the election schedule to the second respondent is issued forthwith and election is conducted within the time frame to be fixed by this Court.

2. That the case of the petitioner, as has been projected by Mr. N.G.R.Prasad, learned counsel appearing for the petitioner, would be that, the second respondent is the Employees' Union, where the petitioner is also a member, who are all the employees of the third respondent. The said second respondent Union is a Registered Trade Union under the Trade Unions Act, 1926, where, there has been Bye-laws approved accordingly, which envisages that, the office bearers once selected by conducting election, will be in office for one year and thereafter for electing the next set of office bearers, elections should be held in every year. This has been specifically stated in Clause 11 of the Bye-laws of the second respondent Employees' Union and accordingly, the present set of office bearers, who had been elected for the year 2019-2020 had been in the office for more than a year and once the one year period is over, the election has to be conducted, for which, notification is to be issued, however for the reason known to them, the second respondent so far has not come forward to issue election notification to elect new set of office bearers to administer the Union for the next one year i.e., 2020-2021.

3. In this context, though efforts having been taken by the petitioner and similarly placed employees with the present set of office bearers to conduct the election, the same since has not been considered by the present office bearers of the Employees' Union, hence the petitioner has made a representation to the first respondent on 14.10.2020, to give instructions to the second respondent Union to conduct the election, by giving notification to that effect. The said representation was given to the first respondent, as the first respondent is duty bound to oversee the proper functioning of the Trade Union registered in this regard under the Trade Unions Act. Therefore, the representation was submitted on 14.10.2020 to the first respondent, however, the first respondent has not acted upon the representation of the petitioner. Therefore, seeking indulgence of this Court, for giving a direction to the first respondent to act upon such representation given by the petitioner, thereby to

ensure that the election is conducted, which is already over due, to the second respondent to elect new office bearers, the present Writ Petition has been filed with the aforesaid prayer.

4. After hearing the petitioner side, on the prima facie, this Court wanted to hear the respondents, especially, the second respondent, who would be the contesting respondent on the prayer sought for herein. Accordingly, notice was ordered to be served on all the three respondents and during the next hearing, affidavit of service to that effect has been filed, where it seems that, the second respondent has refused to receive the notice, therefore, that deemed to be completion of service in the eye of law and accordingly, this Court directed to print the name of all the respondents with full address, as shown in the cause title, in the cause list.

5. When the case is taken up for hearing, Ms.R.J.Radhika, learned Government Advocate appearing for the first respondent, would submit that, the first respondent may not be a contesting respondent on the prayer sought for. However, insofar as the petitioner's representation dated 14.10.2020 is concerned, the first respondent would act upon the said representation as per the indication to be made in this regard by passing orders by this Court.

6. Insofar as the second and third respondents are concerned, though the name and the address having been printed in the cause list, when the case is called today, no one is appearing for those respondents.

7. Insofar as the third respondent is concerned, it is a Management and therefore, they may not have any say on the issue raised between the petitioner and the present set of office bearers of the Union.

8. The second respondent Union also has not chosen to appear before this Court, despite the notice sent by this Court.

9. In view of the same, this Court, based on the available records, as has been filed by the petitioner side, is inclined to proceed with this matter.

10. As has been rightly pointed out by the learned counsel appearing for the petitioner the Bye-laws, especially, the Clause 11 of the same envisaging that, elections to these bodies shall be held once in a year. In order to appreciate the same, Clause 11 of the Bye-laws are extracted hereunder:

"11. The affairs of the Union shall be conducted by an Executive Committee consisting of a President, Office Bearers and representatives. The number of representatives to be elected shall be fixed taking into consideration the number of members of the Union in the shop, section / group of sections etc. The President, not more than three Vice-Presidents, a General Secretary, Two Joint Secretaries and a Treasurer and not more than twenty three representatives shall be elected on the basis of direct secret ballot, at the annual general body meeting. Members other than those Office Bearers of the Executive Committee shall be elected from the section or group of sections as the case may be. The Executive Committee shall make suitable rules to decide the respective constituencies for election of Executive Committee members other than those Office Bearers who are elected by all the members. Elections to these bodies shall be held once in a year, by an Election Committee consisting of the members of the Union nominated by the Executive Committee annually. The number of Election Committee shall be decided by the Executive Committee. The Executive Committee members so elected shall hold office till the next election. Interim vacancies of the Executive Committee shall be filled by the Committee by co-option and the co-opted members shall hold office till the next election. None of the members of the Executive Committee shall be below the age of 18 years."

(Emphasis supplied)

11. It is also the case of the petitioner that, one year period for which, the present set of office bearers had been elected, have been already ended long back. These factors are not disputed as the evidences filed before this Court by way of typed set of papers, disclose that, one year period was over and the present set of office bearers, if at all want to continue, they have to face the election within the meaning of Clause 11 of the Bye-laws.

12. In this context, it is to be noted that, based on the Bye-laws of the Trade Union, whether the election has to be conducted periodically, had been the question, which was decided by the learned Judge of this Court in W.P. No. 24353 of 2010 in the matter of Podhu Thozhilalar Sangam (CITU) vs State of Tamil

Nadu, Represented by its Principal Secretary to Government, Ministry of Labour and Employment, Secretariat, Fort St. George, Chennai-9 and others dated 04.01.2011.

13. In the said Judgment, Mr. N.G.R.Prasad, learned counsel appearing for the petitioner has relied upon para 6, which reads thus:

"6. It has been held in a series of decisions by the Apex Court that Mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute, that Mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found and that technicalities should not come in the way of granting that relief under Article 226 of the Constitution of India. Further, to have industrial peace and harmony, the trade union has to exist by following democratic means and norms. One of the methods is to have Office Bearers duly elected under the bye-laws. In this case it is not disputed that 12 (3) settlement dated 09.08.1990 enables election to the union once in two years under the supervision of the Labour Officer and, in fact, elections were held in the previous years namely 1994, 1997 and 1999 and no election has been held after 2011. I am unable to understand the attitude of the 2nd respondent in rejecting the request of the petitioner which is totally different. In similar circumstances, K.S.Bakthavatsalam J., in Writ Petition No.6415 of 1991 dated 02.07.1992, directed the Labour Officer to conduct election for Office Bearers and Executive Committee Members of the workers union. Similar directions were also issued by K.Govindarajan J., in Writ Petition No. 8721/1998 dated 04.02.1999 and K.Raviraja Pandian, J., in Writ Petition Nos. 2551 of 1999 etc., batch dated 12.02.2001. It is also relevant to refer a decision of the apex Court in F.C.I. Staff Union v. Food Corporation of India, reported in AIR 1995 SC 1344 wherein their Lordships have held that in an industry or a concern more than one unions exist, it is but proper to conduct secret ballot and elect representatives to represent them before the Labour Officer or before the management as well as officers prescribed under the Act. In the said decision, the Supreme Court after prescribing norms and procedures, directed

the Food Corporation of India to hold elections in accordance with the procedures mentioned by them."

14. Following the said judgment, number of similar orders have been passed by this Court on similar occasions and now, the learned counsel appearing for the petitioner has referred to the order dated 05.08.2014 of the Hon'ble Supreme Court in S.L.P. No. 13275 of 2013 in the matter of Management of Foxconn (INDIA) Private Limited vs. Podhu Thozhilalar Sangam (CITU) and others, which reads as follows:

"Application for impleadment is rejected.
The Special Leave Petition is dismissed.
Interim order dated 4th April, 2013 stands vacated."

15. In view of the settled legal position and based on the Bye-laws, especially, under Clause 11, it become incumbent on the present office bearers to issue election notification to go for the election to elect the new set of office bearers to administer the Union for the next one year period, i.e., 2020-2021 and therefore, the said election due, even though is there for more than several months, though action has been taken by the petitioner, by giving request and consistently it has been pursued by him, no action seems to have been taken by the office bearers of the second respondent Union or the first respondent even after the representation dated 14.10.2020, hence, this Court feels that, the petitioner is entitled to get direction by way of mandamus as sought for. In view of the aforesaid observations, this Court is inclined to dispose of this writ petition with the following directions:

"(i) That the first respondent is hereby directed to consider the representation of the petitioner dated 14.10.2020 and accordingly, suitable direction is to be issued to the second respondent Employees' Union for issuance of election notification to conduct the election for electing the new set of office bearers for the next one year period i.e., 2020-2021, which is already in due, in the light of Clause 11 of the Bye-laws and such indulgence shall be made by the first respondent within a period of two weeks from the date of receipt of a copy of this order.

(ii) Once such a direction is issued by the first respondent, the present office bearers of the second respondent Union shall act upon accordingly and necessary election notification to that effect shall be issued fixing the schedule for election within a period of two weeks thereafter."

16. With these directions, this Writ Petition is ordered accordingly. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition also closed.

Sd/-
Assistant Registrar(CO)

// True Copy//

Sub Assistant Registrar

vji

To

1. The Commissioner of Labour,
Registrar of Trade Unions,
Labour Department,
D.M.S. Complex, Teynampet,
Chennai - 600 006.
2. The President,
Ashok Leyland Employees' Union Foundry Division,
Ennore, 389, Thiruvottiyur High Road,
Chennai - 600 019.
3. The Managing Director,
Ashok Leyland Limited,
Foundries Division, Ennore,
Kathivakkam High Road, Ennore,
Chennai - 600 057.

+1cc to Mr.R.Thirumoorthy, Advocate, SR.No.39684
+1cc to Mr.K.Chandramohan, Advocate, SR.No.39698
+1cc to Government Pleader, SR.No.39794

W.P. No. 16924 of 2020 and
W.M.P. No. 21001 of 2020

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SRA(CO)
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