

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 14851 of 2021

**CESC Power Sthyaee Karmachari Sangh
Vs.
The State of West Bengal & Ors.**

For the Petitioner:	Mr. Jayanta Dasgupta, Adv. Ms. Senjit Sengupta, Adv. Mr. Ritesh Maity, Adv, Mr. R. Guha Thakurata, Adv.,
For the Respondent No. 8:	Mr. Jaydip Kar, Sr. Adv., Mr. Debdeep Singh,
For the Respondent No. 4:	Mr. Partha Sarathi Sengupta, Sr. Adv., Mr. Soumya Majumder, Adv.,
For the Respondent Nos. 5 and 6:	Mr. Dwaipan Sengupta, Adv.,
For the Respondent No. 7:	Mr. Samim Ahammed, Adv., Mr. Arka Maity, Adv., Ms. Gulsanwara Pervin, Adv.,
For the State:	Mr. Ansar Mondal, Adv.,

Hearing concluded on: 30.09.2021

Date: 04.10.2021

SUVRA GHOSH, J. :-

1. The petitioner is a Trade Union registered under the Trade Union's Act, 1926. The contention of the petitioner is that the fourth respondent which is the CESC Limited is a big company having several departments

including factory and non factory establishments. The fourth respondent, in its notice dated 01-04-2021, has declared the generating stations, garage, workshop and testing departments as factory establishments and provisions of chapter - III - A of the Trade Unions Act, 1926 is applicable to these departments only. Placing reliance upon section 2 (ka) and 25A of the Industrial Disputes Act, 1947 which define “industrial establishments”, learned counsel for the petitioner has submitted that only factory establishments fall under such definition and other establishments do not come under the definition of factory under section 2(m) of the Factories Act, 1948. The petitioner has alleged that respondent no. 2 who is the Registrar of Trade Unions issued notice to other functioning Trade Union in Form – J intimating the application filed by respondent no. 8 for recognition as a recognised Trade Union in M/s. CESC Limited. Notice of election in Form – N was issued on 01-09-2021 upon all the Trade Unions for determination of the question of recognition. Learned counsel for the petitioner has drawn the attention of the court to the draft electoral rolls and has submitted that out of 6418 voters in the rolls, only 1059 are employed in the departments classified as “industrial establishments” and the other workmen are employed in non industrial establishments. Challenging the notice of election, learned counsel submits that the notice is in contravention to chapter – IIIA of the Act of 1926 as it includes workmen who are employed in non industrial establishments of the company. The petitioner filed an objection before the authority on 09-08-2021 and without disposing of the said application, draft electoral rolls has

been published on 01-09-2021. The election is due to be held on 05-10-2021.

2. The prayer of the petitioner is two fold – (I) Prohibiting conduct of election for recognition of registered Trade Union including departments which do not fall within the ambit of industrial establishments under chapter – IIIA of the 1926 Act, and (II) Prohibiting conduct of elections during this pandemic times.
3. Vehemently opposing the prayer of the petitioner, learned counsel representing respondent no. 8 has submitted that CESC Limited comprises several departments under a single employer. The election is necessary to establish the majority of this respondent and there is no dispute with regard to the fact that CESC Limited is one single unit. The ownership, management, control, finance, etc., are integral parts of the company. Learned advocate has placed reliance on the judgment in Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani v/s Workmen reported in (1960) 1 SCR 703 which deals with specific tests for determining the term “One Establishment”. The Hon’ble Supreme Court, in the said judgment, has observed that the test to determine whether an industrial undertaking having branches, departments and units in different locations comprises a single establishment is the true relation between the branches, units etc.. When one unit is a feeder of another and there is unity of ownership, management, supervision, control, condition of service and the like, all the units come under the umbrella of one establishment. According to learned advocate, CESC Limited is

undoubtedly an industrial establishment and there is no irregularity or illegality in the election notice issued by the second respondent. The second limb of argument canvassed by learned counsel for respondent no. 8 is that it is a fact that the entire world has been undergoing an extraordinary situation due to the pandemic. Nevertheless, normalcy is being resumed gradually in all walks of life including holding of elections, reopening of establishments, markets, transport and the like. So there is no reason for postponing the election on this score. The election may be conducted upon compliance with all covid protocol strictly.

4. Respondent nos. 5 & 6 have adopted the submission made on behalf of respondent no. 8.
5. Referring to section 28A of the Trade Union's Act, 1926 and speaking in support of the submission made on behalf of respondent no. 8, learned advocate for respondent no. 4 has submitted that in the application filed by the petitioner in Form – I before the company for recognition of a registered Trade Union, the petitioner has accepted the CESC Limited to be an industrial establishment. After their registration on 10-11-2014, the petitioner has participated in three elections wherein it was unsuccessful. Learned advocate has taken the court to section 25A and 25L of the Industrial Disputes Act, 1947 wherein the term “industrial establishments” has been defined. It has been emphasised by the company that the company is only interested in a fair election in order to identify the sole bargaining agent/unit who is to be approached for all matters/settlements pertaining to the employees of the company. It is further submitted that

the office of the company is the face of the CESC Limited which deals with several important matters concerning the company and the public at large. An order dated 15-07-2002 passed by a coordinate bench of this court in W.P. No. 1881 of 2001 demonstrates that the election process commenced on the basis of such order which was passed on the prayer of respondent no. 8. It is pointed out that a similar petition was filed by the petitioner before this court for stalling the previous election but the said petition became infructuous due to efflux of time. Learned advocate has placed reliance on the judgment in S.G. Chemicals And Dyes Trading Employees' Union v/s. S.G. Chemicals and Dyes Trading Limited And Another reported in (1986) 2 Supreme Court Cases 624.

6. The State respondent has submitted written instruction and states that there is no embargo on behalf of the State against holding of the election.
7. In reply, learned advocate for the writ petitioner has emphasised on the issue regarding the question of jurisdiction. According to learned advocate, the earlier elections were held contrary to the statute. Referring to section 25A of the Act of 1947, learned advocate has submitted that the said provision deals with lay off and retrenchment of employees. Learned advocate pleads violation of natural justice. Reliance is placed on the decision of an Hon'ble Division Bench of this court in International Karmachari Union vs. Hotel Hindusthan International & Ors. in APO. No. 454 of 2006; W.P. No. 2265 of 2005 and Hotel Hindusthan International Karmachari Union v/s. Hotel Hindusthan International Employees and Workers' Union & Ors in APO No. 469 of 2006; W.P. No. 2250 of 2005.

8. I have considered the submissions made on behalf of the parties and also the documents on record.

9. Section 28A of the Act of 1926 is reproduced :-

“28-A. Application for recognition.- (1) Subject to the provisions of sub-section (2), any registered Trade Union may apply in the prescribed manner together with such fee as may be prescribed to the Registrar for recognition as a recognised Trade Union for an industrial establishment or a class of industry in a local area, as the case may be.”

10. The provision relates to an industrial establishment or a class of industry.

The crux of the dispute between the parties is whether CESC Limited is an industrial establishment and also whether all the departments under the establishment can be termed as factory establishments.

11. Section 2 (ka) of the 1947 Act defines “industrial establishments or undertaking” as an establishment or undertaking in which any industry is carried on. Clause (b) of the said provision envisages that “if the pre dominant activity or each of the pre dominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking

or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking.”

12. Section 25A and 25L of the 1947 Act defines “industrial establishment” as a factory, mine and plantation for the purpose of the chapters dealing with lay-off and retrenchment of workmen and closure in certain establishments.

13. It is not in dispute that the company (CESC Limited) is a single unit so far as ownership, management and control are concerned. The various departments situated at different places are integral parts of the company and can be termed as a single establishment. Page- 22 of the writ petition which is a notice issued by the company on 01-04-2021 indicates that (i) generating stations, (ii) garage and workshop and (iii) testing departments, shall be treated as factories for the purpose of determining overtime benefits of the employees.

14. In its application before the company in Form – I for recognition of a registered Trade Union, the petitioner has accepted the company to be an industrial establishment. The company is also recognised as an industrial establishment in the notice issued in Form – J. The draft electoral roll was published on 01-09-2021 inviting claims and objections, if any, against the same. But no objection was raised by the petitioner before the Returning Officer. The petitioner, by a letter dated 09-08-2021 sought the view of the second respondent with regard to application of chapter – IIIA

of the Act to office establishments. The said letter has not been replied to by the second respondent.

15. The petitioner seeks to divide the company into two establishments – industrial and non industrial. That the company as a whole is an industrial establishment has not been disputed by the petitioner. The petitioner's case is that the workmen who form the majority and are represented by other Trade Unions are employed in non industrial establishments and only a meagre number of workmen are employed in industrial establishments under the company. Further, the workmen employed in industrial establishments are only entitled to recognition of their Trade Union under section 28A of the Act of 1926.
16. The company undoubtedly being an establishment in which an industry is carried on, can be termed as an industrial establishment as defined under section 2 (ka) of the Act of 1947. True, some of the establishments of the company have been treated as factories in the notice of the company dated 01-04-2021. The question which falls for consideration is whether the establishments termed as factories are separable from the non factory establishments under the company. It is not in dispute that though various departments of the company are located at different places in Kolkata, all the departments are interdependent and inseverable. Therefore if some of the departments are held to be industrial establishments and are not severable from the other departments for the purpose of carrying on the predominant activities of the establishment as

a whole, the entire establishment shall be deemed to be an industrial establishment.

17. This proposition of law has been dealt with by the Hon'ble Supreme Court in the judgment in S.G. Chemicals (supra). The judgment establishes the proposition that when the functions of several establishments of a company are neither separate nor independent but are so integrally connected that one unit cannot function without the other, all such establishments constitute one single unit. The judgment in Associated Cement Companies (supra) also speaks about the test for determining what is "one establishment". In the said judgment, the Hon'ble Supreme Court has observed that when there is a unity of ownership, management, supervision, control, finance, employment, labour, condition of service of workmen, etc., in the departments, all the departments form one single establishment.

18. In the case in hand, the factory and non factory departments under the company are interlinked and inseverable and jointly contribute in running the industry as a whole. No unit is severable from the other unit of the establishment. The company being an industrial establishment as a whole as discussed earlier, the departments comprising the company cannot be distinguished as factory and non factory for the purpose of section 28A of the Act of 1926. The said provision deals with recognition of a Trade Union for an industrial establishment. There is no further classification in the said provision with regard to factory and non factory departments under the industrial establishment. The petitioner having applied before

the company under section 28A of the Act of 1926 has thereby recognised the company as an industrial establishment.

19. The petitioner participated in the earlier elections, at least 3 in number, without a demur. Despite receipt of notice regarding publication of draft electoral roll wherein claims and objections, if any, were invited, the petitioner, instead of ventilating its grievance before the authority, filed the present writ petition.
20. The ratio of the judgment relied upon by the petitioner can be distinguished from the fact situation of the present case. The said judgment deals with the question whether hotel is an industrial establishment. A hotel establishment not being at par with the CESC Limited, the judgment is not applicable herein.
21. The petitioner has also prayed for an order prohibiting the conduct of election on the ground of pandemic.
22. It is a fact that the entire world has been going through difficult situations owing to the pandemic which has disrupted normal life. However normalcy is being resumed slowly and steadily with regard to all activities and the nation is making an endeavour to gradually adapt to the new normals. With the opening of the establishments, markets, etc., holding of elections and resumption of other public activities, there is no reason to forbid the election for recognition of the Trade Union scheduled to be held on 05-10-2021 subject to strict compliance of all covid protocols.

23. In view of the above observations, the prayers of the petitioner cannot be acceded to.
24. Accordingly, the writ petition being W.P.A. 14851 of 2021 is dismissed.
25. There shall however be no order as to costs.
26. Before parting it is necessary to state even at the cost of reiteration that the concerned authority shall conduct the election on 05-10-2021 upon strict compliance of all covid protocols.
27. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)