

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.605 of 2021

Dravida Thozhilalar Uzhiyar Sangam
rep. by the General Secretary R.S.Manimaran
No.110, SPT Mani Nagar
Vadakutha, Kurinjipadi
Cuddalore District 607 308. Appellant/ Petitioner

Vs.

1. The Deputy Chief Labour Commissioner (Central)
No.26, III Block
5th Floor, Shastri Bhavan
Haddows Road, Nungambakkam
Chennai 600 006.1st Respondent/ Respondent
2. NLC Mazdoor Sangh
rep. by its General Secretary V.Murugan
Viswakarma Bhavan
D-24, Perumal Kovil Salai
Block No.27
Neyveli 607 803.
3. CITU NLC Labour and Staff Union
rep. by its General Secretary
Behind CBS, Block No.24
Neyveli 607 801.
4. N.L.C. Pattali Thozhil Sangam
rep. by its V.Thilakar
General Secretary
D-10, K.N.Subburaman Salai
Block 19
Neyveli-3. 2 to 4 Respondents

[R2 to R4 impleaded vide order dated 10.03.2021
in CMP Nos.4729, 4802 & 4859 of 2021]

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 19.01.2021 made in W.P.No.1173 of 2021.

Prayer in W.P.No.1173 of 2021:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Certiorari Mandamus Calling for the records from the respondent relating to the election rules dated 23/12/2020 and quash the rule 3 (1) and direct the respondent to permit the petitioner Sangam to participate in the Union Election to be held on 04/02/2021.

For Appellant :: Mr.N.G.R.Prasad
For Mr.R.Rajaram

For Respondents :: Mr.V.Chandrasekaran
for respondent-1

Mr.P.Wilson, S.C.
for Mr.A.Deivasigamani
for respondents 2 to 4

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The matter pertains to the trade union elections in the Neyveli Lignite Corporation. The appeal is directed against an order of January 19, 2021 passed on a recent writ petition. The writ petition was disposed of by giving a limited direction to the Deputy Chief Labour Commissioner (Central) to consider the request of the writ petitioner Union, in consultation with all the stakeholders and take a decision as to whether the writ petitioner union could be permitted to participate in the election.

2. Admittedly, there is an embargo on any trade union which is registered for less than a year to participate in any election. The writ petition was directed against such embargo and the Writ Court did not undo the prohibition, but merely required the Labour Commissioner to consider the matter in consultation with other trade unions. In the appeal received from the order, the following direction was issued on February 25, 2021:

"Subject to the outcome of the present writ appeal, the union election shall be conducted, but the results alone shall be withheld.

Post on 10.03.2021."

3. In the context of the present appeal, there does not appear to be any justification to continue the wholly unreasoned order dated February 25, 2021 particularly in the light of vehement objection thereto by the rival trade unions.

4. The issue in the writ petition was whether a particular provision in the Code of Discipline had to be adhered to and whether a newly-formed union could enter the election fray without the mandatory waiting period of a year. The prayer was not entertained and a consensus was permitted to be arrived at, so that if the other participants in the election did not have any objection, the writ petitioner union could also participate in such election. However, most of the trade unions did not agree with the writ petitioner for the relevant provision not to be given effect to.

5. There are several reasons why the appeal is liable to be dismissed as it is utterly unmeritorious and without any basis. First, the writ petitioner has allowed the order under appeal to be worked out before prosecuting the appeal. It is elementary that when such a course of adoption is adopted, the appellant is precluded from proceeding with the appeal.

6. Secondly, there is a clear bar which is admitted and neither the Writ Court could have had the authority to remove the bar, nor can the other trade unions, which objected to the writ petitioner's participation in the election, be blamed for taking such a stand in accordance with the relevant provision.

7. Finally, the petitioner relies on an order dated December 11, 2007 passed in Writ Appeal Nos.502 and 503 of 2005 and places the operative part thereof at paragraph 23. Clause (a) of the relevant paragraph of the judgment reads as follows:

"(a) the employer shall hold a secret ballot, under the supervision and control of the Regional Labour Commissioner (Central), Sastri Bhavan, Chennai, within a period of 3 months, to test the strength of all the Trade Unions." (Emphasis supplied)

8. The appellant first suggests that the bar that the appellant now finds was not in place at the time when the judgment was delivered. This is clearly wrong as the Code of Discipline has contained the same prohibition from 1958, debarring newly-formed unions from participating in elections within one year of their formation.

9. The appellant further claims that the expression used in the order is "all the Trade Unions" and, therefore, whether or not a trade union has been formed less than a year prior to the election is not relevant in the context of the said order. Such

contention has to be stated to be rejected. The order of the Court dated December 11, 2007 cannot be twisted out of context to imply that it undid a prohibition in the applicable rules by using the expression as underlined. The relevant words, "all the Trade Unions", must be read to mean and imply "all trade unions entitled to participate in the election" and not otherwise.

10. The appellant also suggests that it would be undemocratic to disenfranchise a group of persons only because their union has been recently formed and the date of formation of a union may have no nexus with the right to participate in an election. Every election is governed by a set of rules. The rules in this case do not permit a union formed less than a year before the election is conducted to participate in such election. The rule has been in vogue for long and there does not appear to be any apparent arbitrariness in the prohibition that the appellant protests.

11. For the reasons aforesaid, W.A.No.605 of 2021 is dismissed. The order passed in this appeal on February 25, 2021 is vacated forthwith. There will be no impediment to the election being conducted, if the process has not been completed by now, or in the results being declared.

There will be no order as to costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kpl/suk

To:

The Deputy Chief Labour Commissioner (Central)
No.26, III Block
5th Floor, Shastri Bhavan
Haddows Road, Nungambakkam
Chennai 600 006.

+1cc to Mr.V.Ajay khose , Advocate SR.No. 15719
+1cc to Mr.V.Chandrasekharan , Advocate SR.No. 15741
+1cc to Mr.R.Rajaram , Advocate SR.No. 15322

W.A.No.605 of 2021

A.SK(31.03.2021)