

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.02.2021

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.No.19571 of 2019

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W.M.P.Nos. 19079,19081 and 19082 of 2019 and 4063 of 2020

Heavy Vehicles Factory National Workers Union
represented by its
General Secretary
No.6, 6th street
Vaishnavi nagar, RCC Post
Chennai-600109

... Petitioner

Vs.

1.Union of India
Rep by the Secretary
Ministry of Defence
No.104, South Block
New Delhi-110011

2.The Chairman/Director General Ordnance of Factories
Ordnance Factory Board
Ayudh Bhawan,
10-A, S.K.Bose Road
Kolkota-700001

3.The Senior General Manager
Heavy Vehicle Factory
Avadi, Chennai-600054

4.A.Anjappa
LWC(C)
Heavy Vehicle Factory
Avadi, Chennai-600054

5.Heavy Vehicles Factory Mazdoor Sangh
rep by its General Secretary, Heavy Vehicles
Factory, Avadi,
Chennai-600 062

6.All India Dr. Ambedkar National Employees
Union, rep by its General Secretary, Heavy
Vehicles Factory, Avadi,
Chennai-600 062

7.Avadi Thin Oorthi Thozhilalaga Thozhilalar
Munnetra Sangam, rep by its General Secretary
Heavy Vehicles Factory, Avadi
Chennai-600 062

8.HVF Thozhilalar Munetra Sangam, rep by its
General Secretary, Heavy Vehicles Factory, Avadi
Chennai-600 062

(R5-R8 impleaded vide order
dated 05.02.2021 made in
WMP.No.4063/2020 in
W.P.NO.16571/2019 by this Court)

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus calling for the records of the 3rd respondent relating to Order No.106 dated 14/06/2019 issued by the 3rd respondent and the consequential order of the 3rd respondent bearing No.3/13/ Union Verification/HVF/CR/2019 dated 21.06.2019 and quash the same and direct the respondents to conduct the membership verification exercise for assessing the strength of the unions operating in the Heavy Vehicles Factory for the purpose of recognition by strictly adhering to the guidelines contained in Letter No.12/12/Verification/2014/A/IR dated 31.12.2014.

For Petitioner : Mr.V.Prakash, Senior Counsel
for M/s. Ramapriya Gopalakrishnan

For Respondents : Mr.T.L.Thirumalaisamy, CGSC for R1 to 4
Mr.R.Manickavel for R5

O R D E R

Originally a writ petition in W.P.No.1711 of 2012 was filed by Heavy Vehicles Factory, Mazdoor Sangh against the unilateral alteration of date for verification of membership. The main grievance agitated before the Court was that the 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.

2. This Court after hearing all the parties and also after considering the guidelines on membership verification of Unions/Association through secret ballot on 03.02.2010 have given the following directions:

" 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.

3. Pursuant to which the official respondents 1 to 4 have issued a notification No.106 dated 14.06.2019, as under:

" HEAVY VEHICLES FACTORY AVADI, CHENNAI-54

FACTORY ORDER PART-I BY
SHRI SANJEEV KISHORE, IOFS, Sr.GENERAL MANAGER
NO.106

DATE:14.06.2019
SUB:MEMBERSHIP VERIFICATION OF UNIONS BY SECRET
BALLOT-REG.

REF: F.O.I.No.92 dt 30.05.2019

In compliance with OFB's instructions based on the Hon'ble High Court, Chennai Order dated 16.04.2019, as notified in F.O I under reference, Sr.G.M. has nominated Shri A.Anjanappa, LWC(C) to conduct the Dual/Multiple membership verification exercise to ascertain the membership strength of Unions/Associations based on the strength furnished by Unions for the year 2018, as on 31.12.2018. Shri V.Vinayagam, Addl.GM/P has been nominated as the "Appellate Authority" for settlement of dispute if any, arising out of and in the course of conducting the said membership verification exercise.

LWC(C) shall first prepare a Union/ Association -wise list of single membership in respect of each Union/Association and then identify the persons who figure in two or more lists from the list of membership furnished by the unions. Thereafter, a copy of the list of single as well dual/multiple membership shall be sent to the concerned Unions/Associations for their perusal.

If such members belong to two Unions/Associations, only those two Unions/Associations will be given the list; if they belong to 3 Unions/Associations, only those three Unions/Associations shall be given the list and so on. The individual should be allowed to opt for one Union/Association from amongst those Unions/Associations only on whose membership lists his name appears. In case the employee opts for a Union/Association on whose list his name does not appear, his name will be deleted from all the lists and will not be counted in the membership of any Union/Association.

In case dual membership is found in the list of Unions/Associations while comparing the lists submitted and list of employees as per the check-off system, affinity of those names also are to be decided by the Secret Ballot.

The Election schedule of events for verification of membership of the unions/Associations is as follows:

Sl. No	ACTION	DATE
01.	Date by which LWC has to finalise the dual/multiple membership	14/06/2019
02.	Date by which the segregated list will be furnished to the Unions/Associations by the LWC(C) in soft copy i.e a) the list submitted by the unions as on 31/12/018 b) Segregated list of single members, Dual/multiple, Duplicate members	15/06/2019

Sl. No	ACTION	DATE
03.	Date by which all unions must submit the following documents. (self certified copies) such as: 1) Union registration certificate 2) Annual returns & audited statements of accounts for the years 2018.(if not done) 3)Recognition order of Unions, if available 4) Counter foils of the subscription receipts for the year 2018 (as on 31/12/2018) 5)Affiliation Certificate in case affiliated to Federations (AIDEF, INDWF & BPMS only) 6) List of Office bearers/Executive Committee members along with update Byelaws/Constitution of the union	29/06/2019
04	Dates on which secret ballot is to be held for Eliminating Dual/Multiple Membership	08/07/2019 & 09/07/2019
05	Date on which secret ballot papers to be opened before representatives of the Unions/Associations	10/07/2019
06	Date of notifying membership figures of each Unions/Associations	20/07/2019

Regarding nomination of Presiding Officers/Polling Officers, booth wise list, counting etc., further instructions would be notified in the due course.

M.SIVAKUMAR

JT.GENERAL MANAGER/ADMIN
FOR Sr.GENERAL MANAGER "

4. Petitioner made a request on 17.06.2019 to postpone the verification to last week of July 2019 as the members cannot come and vote on 8th and 9th of July 2019 for eliminating dual or multiple membership. The said request was rejected by the Official respondent on 21.06.2019. Again the petitioner Union made a request on 25.06.2019 for providing

1. Date of submission of Annual returns to Registrar of Trade Unions for the year 2018 of all the Registered Unions.

2. Total members of each Union for the year 2018 submitted with Annual Return

3. Whether the copy of Annual return 2018 of all the Unions submitted to HVF is verified?

5. Thereafter, procedure of verification of membership was proceeded and Secret Ballot was held on 8th and 9th July 2019 for eliminating dual or multiple membership. Of course the Secret Ballot were opened before the representatives of the Union/Association on 10.07.2019. However, the petitioner has obtained interim orders before this Court to the effect that the Official respondents are restrained from publishing the results of Secret Ballot which was held on 08.07.2019 and 09.07.2019 until further orders from the Court. But the fact remains that before this Court order dated 11.07.2019 could be communicated to the Official respondents, the verification process was already over. It was only at the stage of notifying the membership figures of each union in the Joint Consultative Machinery.

6. It is pertinent to note that by virtue of this interim order, notification was delayed by one and half years and the time has ripened for conducting the next verification. The verification process was conducted as per the direction of this Court in W.P.No.1711 of 2012 and this Court has already fixed the time limit for completion of the process on or before 31.07.2019. If at all the time provided for elimination of dual membership was not enough, the petitioner could have approached this Court for extension of time as this Court has given liberty to the parties to approach the Court for extension of time. Without doing so, the petitioner at the fag end of verification process has approached this Court. By the time the petitioner approached, the relief sought for by the petitioner had become infructuous. Therefore, there is no meaning in keeping the interim order. If interim order is vacated it automatically goes without saying that the entire writ petition becomes infructuous.

Therefore, considering that the relief sought for has already become infructuous, without making any further observation on merits of the case, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary, Union of India
Ministry of Defence
No.104, South Block
New Delhi-110011

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Ordnance Factory Board
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10-A, S.K.Bose Road
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General Secretary, Heavy Vehicles Factory, Avadi
Chennai-600 062

+1cc to Mr.TL.Thirumalaisamy, Advocate, S.R.No. 10099
+2cc to Mr.R.Manickavel, Advocate, S.R.No.10429
+1cc to Mr.Ramapriya Gopalakrishnan, Advocate, S.R.No.11659
+1cc to Mr.S.Sathish (R6), Advocate, S.R.No. 10207

W.P.No.19571 of 2019

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4063 of 2020

PL (CO)
GN(29/03/2021)