

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **23.12.2020**

Pronounced on : **05.05.2021**

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

**Review Application No.122 of 2020
and W.M.P.Nos.24320 and 24321 of 2020
in
W.P.No.16924 of 2020**

Ashok Leyland Employees Union Foundry Division
Ennore,
Represented by its President
389, Thiruvottiyur High Road,
Chennai - 600 019.

... Review Applicant

Vs.

1. Muthukumarasamy
2. The Commissioner of Labour
Registrar of Trade Unions
Labour Department
D.M.S. Complex, Teynampet,
Chennai - 600 019.
3. Ashok Leyland Limited,
Foundries Division, Ennore
Represented by its Managing Director
Kathivakkam High Road, Ennore
Chennai - 600 057.

... Respondents

Prayer: Petition filed under Section 114 of Civil Procedure Code and Article 226 of the Constitution of India praying to review the order made in W.P.No.16924 of 2020 dated 08.01.2020.

For Petitioner : Mr.B.Vijay
for Mr.K.Chandramohan

For Respondents : Mr.N.G.R.Prasad
For Mr.R.Thirumurthy for R1
: Ms.R.J.Radhika
Government Advocate for R2

ORDER

This Review Application has been filed to review the order passed by this Court in W.P.No.16924 of 2020, dated 08.12.2020.

2. Before dealing with the grounds raised in this review application, the facts in nutshell which are required to be noticed as projected in the writ petition are as follows :

(i) that the first respondent herein who was the employee of the third respondent herein and member of the second respondent herein Union had filed the aforesaid writ petition in W.P.No.16924 of 2020, seeking for a writ of mandamus directing the first respondent therein, i.e., the second respondent herein to consider the representation of him, dated 14.10.2020 and to see that the election schedule to the petitioner union is issued forthwith and election is conducted within a time frame.

(ii) On considering the prima facie case projected by the writ petitioner, notice was ordered in the said writ petition to all the respondents.

(iii) Since the employees union who was the second respondent in the writ petition and the review applicant herein being the contesting respondents, when notice served on them, they refused to receive the notice on 28.11.2020. Therefore the returned postal cover with the postal endorsement "refused", since had been filed before this Court, after having taken note of the same, this Court proceeded to hear the writ petition and decided the same by final order, dated 08.12.2020.

(iv) In the said writ petition, this Court, after having gone through the facts of the case as well as the relevant bye-laws of the petitioner union herein, also by taking note of the earlier orders passed at various occasions, which are similar to the present one, ordered the said writ petition by giving the following directions :

"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 Byelaws 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."

(v) Aggrieved over the said order passed by the writ court, dated 08.12.2020, the present Review Application has been filed by the petitioner herein who was the second respondent in the main writ petition, who refused to receive the notice sent by this Court.

(vi) The point which was raised in the writ petition that, the petitioner / second respondent trade union is a registered trade union consisting of the employees of the third respondent, who were the members of the trade union, wherein, as per the bye-law, which is being followed scrupulously, the office bearers elected by a democratic means and secret ballots would be in office for one year and after one year period, the new set of office bearers would be elected by election to be conducted on the next year, i.e., at the end of the one year period.

(vii) This is the way in which the trade union was administered by the elected office bearers from time to time. In this regard, this Court, after having gone through Clause 11 of the bye-laws, has taken note of the same and extracted in para 10 of the order under Review, which reads thus:

"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)"

(viii) This Court also had considered various Judgments of this Court, which had been cited by the learned counsel who appeared for the writ petitioner and that was also taken note of, by this Court in para 12, 13 and 14 of the order under Review, which reads thus :

" 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."

(ix) Therefore, aggrieved over the same, i.e., the order passed by the writ Court as referred to above dated 08.12.2020, the present Review Application has been filed by the employees union.

3. The grounds raised mainly in this review application is that, the review applicant has not been given an opportunity to put forth their case and it is an ex parte order passed by this Court on 08.12.2020, which is the order under Review. Therefore mainly on that ground, they filed this Review. That apart, they raised the further ground that, due to COVID-19 pandemic situation, 70% of the members were of the opinion that, the election can be postponed for six months, within which the various settlement talk which are going on between the employees union and the management can be concluded and thereafter, election can be held. Therefore without taking note of those factors, since the writ court has passed orders in the writ petition on 08.12.2020, on that ground also, this Review Application has been filed.

4. That apart, certain decisions of the Law Courts have also been cited on behalf of the Review Applicant, stating that, in election dispute of trade union, which is not a public duty cast upon the trade union to be monitored, normally, High Court will not interfere by invoking the extraordinary jurisdiction under Article 226 and therefore, on that ground also, the directions issued by this Court, by order, dated 08.12.2020 in the

order, which is under Review, might not be augur well and therefore, on that ground also, this Review Application has been filed.

5. I have heard Mr.B.Vijay, learned counsel appearing for the review petitioner and Mr.N.G.R.Prasad, learned counsel appearing for the writ petitioner, who is the first respondent in the Review Application.

6. First of all, this Court wants to emphasize that, when notice was issued to the respondent trade union, who is the present review applicant, and when the notice was served, specifically on behalf of the trade union the Office Bearers have refused to receive the same on 28.11.2020 and in this regard, the postal endorsement made had also been filed before this Court.

7. It is a settled legal proposition that, once the Court notice is refused by the litigant or parties to the proceedings, it can be deemed to be a completed service and on that basis, the Court can proceed further.

8. Here in the case in hand, if at all it is a trade union and if it is very much interested in the welfare of its members and for which, the elected office bearers for the one year period, have been functioning and they want to continue their function for further shorter time, either due to COVID-19 situation or due to pendency of the wage settlement and if any majority decision is taken, whatever decision they want to take, however, that should not stand in the way to conduct the election to elect new office bearers.

9. Further, it is a settled proposition that, once the Court notice is refused, such kind of litigant cannot be considered as a scrupulous litigant and therefore, he cannot come forward thereafter and make a hue and cry that, he has not been heard and ex parte order has been passed.

10. Absolutely no plausible reason has been stated anywhere in the grounds urged in the Review Application, as to by which force or for what reason, they have been prevented from appearing in the Court.

11. Though it has been stated that, the Court notice they received on 04.12.2020 and the counsel was engaged, who, due to COVID-19 had gone for test and he was not able to file vakalath, the said reason cannot be accepted by this Court, because, private notice sent to the writ petitioner, pursuant to the direction issued by this Court, has been specifically refused by the trade union office bearers, i.e., the Review Applicant herein on 28.11.2020 itself. Therefore, they had every knowledge about this litigation and knowing well that, the writ petition has been filed seeking the aforesaid relief, they chosen not to accept the notice and subsequently, after allowing this Court to pass orders on 08.12.2020, thereafter they come forward now by filing the present Review Application stating the reason that, only on 04.12.2020, they received the Court notice.

12. Therefore, these factors would establish that, the Review Applicant has not approached this Court with clean hands and very intentionally since the Review Applicant has refused to receive the Court notice, no sympathy can be shown on them, as such unscrupulous act towards the Court cannot be digested easily by this Court.

13. On the ground of merits, as urged by the Review Applicant in this review, what they stated is that, due to COVID-19 situation, the wage negotiation which was already commenced with the management could not be completed. Therefore after completing the wage settlement, election can be conducted to elect new office bearers, was the majority view of the members of the trade union.

14. If that being so, the present office bearers should have taken into confidence of all the members of the trade union and accordingly, they could have obtained a vote on account to continue them for other few months to complete the wage settlement, provided, if any such extension of the office bearers are permissible, within the meaning or provisions of the bye-law of the trade union concerned.

15. No such provision in the bye-law has been quoted by the Review Applicant.

16. Moreover, if at all the present set of office bearers enjoy the confidence of the majority members by stating that, majority have

expressed their view or desire to complete the wage settlement by the present set of office bearers, the present office bearers can very well face the election and get the nod from the majority members for a further term of one year.

17. Though this Court does not want to go into the merits of the claim and counter claim made by the present office bearers or opponent party, that the writ petitioner's group, got defeated in the last election there is an internal feud between two groups of the trade union, only in order to give answer to the ground raised by the applicant, this Court has expressed the said view. Otherwise this Court does not have any intention to interfere with the internal affairs of the trade union as to which group has to lead the trade union for the next one year.

18. Insofar as the case laws cited by the learned counsel appearing for the Review Applicant is concerned, though number of decisions have been quoted, those decisions may not be applicable to the facts of the present case. Some of them are taken note of by this Court and are dealt with herein.

19. In **Praga Tools Corporation Vs. Shri C.A.Imanual** reported in **(1969) 1 SCC 585**, it was the issue that a writ of mandamus would not lie against the company incorporated under the Companies Act. That Judgment is no way connected with the present case, as set of directions has been issued only to the Labour Commissioner, which is the public authority under the provisions of the Act to oversee the functioning of the trade unions.

20. The bye-laws with regard to the internal management of the trade union since have no statutory force, there is no statutory obligation in the Commissioner and no mandamus lies to the Commissioner to nominate a Returning Officer, was the proposition in **H.M.T.Karmika Sangha v. Commissioner of Labour** reported in **ILR 1985 Karnataka 411**.

21. However here in this case, no such venture has been made by this Court, except to give a direction to the Labour Commissioner to decide the representation given by the writ petitioner on merits and act accordingly.

22. The same view also was expressed in **Ideal Jawa Employees Association v. Umesh and Ors.**, reported in **MANU/KA/0291/1984 : ILR 1985 KARNATAKA 1080** also. Therefore that may not also be applicable to the present facts of the case.

23. In **(2003) 11 SCC 607**, in the matter of **Chairman, SBI v. All Orissa State Bank Officers Assn.**, the learned counsel has quoted the said Judgment vehemently to establish the proposition that, impermissibility of interference in administrative matters, the grievance redressal procedure stipulated that, right of representation was confined only to the officer concerned or his co-employee, no such right conferred even on the majority recognised unions. Therefore there was no scope for interference in exercising of writ jurisdiction.

24. It was also held in that Judgment that, writ of mandamus could not be issued directing the employer to bring into existence such a system of representation in grievance redressal procedure.

25. Absolutely, no such direction given in the order under review to the employer and therefore the said Judgment also may not be applicable to the facts of the present case.

26. Like that, in **2008 (6) CTC 377**, in the matter of **K.V.Sridharan v. S.Sundaramoorthy** also, since it was the election dispute which is sought to be resolved, the Division Bench was of the view that, the election dispute in a trade union need not be interfered with by the writ Court.

27. Here, no such interference has been made by this Court by giving direction in the writ petition to the Labour Commissioner to decide the request made by the writ petitioner in the manner known to law.

28. Even in respect of two other Judgments of this Court by the learned Judges in **K.S.S.Kowshik v. State Bank of India and Ors.**, [MANU/TN/1201/2006] and **K.Vijayakumar v. General Manager** [W.P.(MD).No.20095 of 2018, dated 19.09.2018], the view expressed by the learned Judges are absolutely no quarrel on that, as this Court has not made any attempt to resolve any private dispute.

29. It was also relied upon a recent Division Bench Judgment of this Court, dated 23.09.2020 made in W.A.Nos.606 and 450 of 2020 in the matter of M.Umapathy v. The Joint Commissioner of Labour-I and others.

30. In the said Judgment, the Judgment in **North Eastern Railway Employees Union v. III Additional District Judge, Farukhabad**, reported in (2006) 10 SCC 417, has been quoted.

31. In that case, the High Court seems to have appointed the General Manager, North Eastern Railway, as the authority to conduct the election. However, the Hon'ble Supreme Court in the aforesaid decision has interfered with the same and has modified and directed that, the election should be conducted under the supervision of the Registrar of Trade Union.

32. Exactly the same position is prevailing in this case also, where instead of appointing an Advocate-Commissioner or an officer as an election officer to conduct election of the trade union, a direction can be given to the Registrar of the Trade Union to supervise the same.

33. Therefore, exactly that kind of indulgence has been shown by this Court by passing orders on 08.12.2020 in the writ petition, where by relying upon Clause 11 of the bye-laws, a direction was given to the Labour Commissioner to decide the representation given by the writ petitioner to see that, the election for the Review Applicant's Trade Union is conducted as per the provisions of the bye-laws and in this regard, the said request of the writ petitioner can be decided on merits within a time frame.

34. Therefore, none of the decision as quoted by the learned counsel appearing for the Review Applicant would advance the case of the Review Applicant.

35. Moreover, as I have stated in the earlier paras, the review applicant has not approached this Court with clean hands, as he wilfully and purposely refused to receive the Court notice when it was served, of course through private notice. Having noted the developments taken place in the writ petition and after seeing the orders passed by this Court on 08.12.2020, belatedly has come out with this Review Application on the

sole reason or intention to see that, the election to the trade union as per the bye-laws should not be conducted, so that the present set of office bearers can enjoy the position as office bearers without the sanction of the democratically elected method and for that kind of evil design, this Court cannot be made as a party and therefore, this Review Application is liable to be rejected.

36. Therefore, for all these reasons, this Court is not inclined to accept this Review Application, thereby it is deserved to be dismissed. Hence, it is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

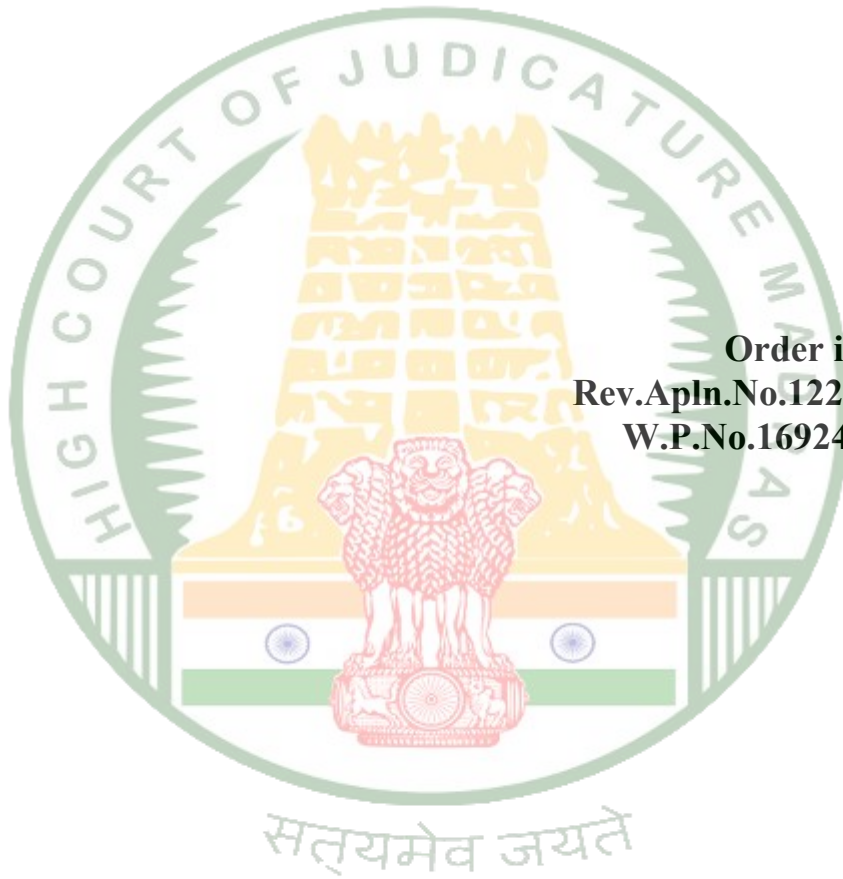
05-05-2021

Index : Yes
Speaking Order
tsvn

To
The Commissioner of Labour
Registrar of Trade Unions
Labour Department
D.M.S. Complex, Teynampet,
Chennai - 600 019.

R. SURESH KUMAR, J.

tsvn



**Order in
Rev.Apln.No.122 of 2020 in
W.P.No.16924 of 2020**

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