

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10173 OF 2022

Vishay Components India Pvt. Ltd.	...Petitioner
V/s.	
The Assistant Labour Commissioner and Conciliation Officer and Ors.	...Respondents

Mr. K. S. Bapat a/w. Ms. Druti Datar, for the Petitioner.
Mr. Nitin A. Kulkarni, for the Respondent Nos.2 and 3.

**CORAM : C.V. BHADANG, J.
DATE : 30 AUGUST 2022**

MAMTA
AMAR
KALE

Digitally
signed by
MAMTA
AMAR
KALE
Date:
2022.08.30
19:34:44
+0530

P.C.

. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. The challenge in this petition is to the order dated 11 February 2022 passed by the Assistant Labour Commissioner cum Conciliation Officer, Pune, thereby granting approval to the name of Respondent No.3 (represented by the second Respondent – Union) as a ‘protected workman’ under Section 33(4) of the Industrial Disputes Act, 1947 read with Rule 66(4) of the State Rules framed under the said Act.

3. Heard learned counsel for the parties.

4. The only contention raised on behalf of the Petitioner is that there was a departmental enquiry initiated against the third Respondent for chronic absentism in April 2021 and subsequent to this, the Union forwarded the name of the third Respondent as a 'protected workman' in September 2021. It is pointed out that the third Respondent was absent from duty on 24 occasions comprising in 133 days in a year.

5. Reliance is placed on behalf of the Petitioner on the decision of the Kerala High Court in *Hii Lifecare Ltd. Vs. Hindustan Latex Labour Union and Anr.*¹ in order to submit that in such a case the action of the Union to forward the name of an employee / workman who is already facing a departmental enquiry is not justified. It is submitted that there is no consideration of this aspect in the impugned order.

6. The learned counsel for the Respondents submitted that the Union is entitled to propose the name of the workman as a 'protected workman' and the appropriate authority has rightly approved the name.

7. I have considered the submissions made.

¹2010 SCC Online Ker 3762

8. A perusal of the impugned order dated 11 February 2022 clearly indicates that there is no consideration of the ground on which the Petitioner had opposed the grant of approval to the third Respondent as a 'protected workman', namely the pendency of the departmental enquiry. I also find that the decision of the Kerala High Court was not brought to the notice of the Respondent No.1. In that view of the matter, I find it appropriate that the matter is reconsidered by the Respondent.

9. In that view of the matter, the petition is partly allowed. The impugned order is hereby set aside. The matter about grant of approval to the third Respondent, as a 'protected workman' is restored back to the file of the Assistant Labour Commissioner for reconsideration, on its own merits and in accordance with law.

10. The parties to remain present before the first Respondent on 12 September 2022.

11. The matter shall be decided by the first Respondent within a period of eight weeks' from the date of appearance of the parties.

12. The rival contentions of the parties are left open.

The Rule is partly made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.