



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.06.2022

DELIVERED ON : 23.06.2022

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD)No.12642 of 2022

and W.M.P.(MD)Nos.8957 & 8964 of 2022

WEB COPY

BHEL Pattali Thozhir Sangam,
Rep. by its General Secretary,
G.Prabu.

... Petitioner

/vs./

1.The Bharat Heavy Electricals Ltdd,
Rep. by its Chairman and Managing Director,
Corporate Office,
Siri Fort,
New Delhi - 100 049.

2.The General Manager Incharge,
The Bharat Heavy Electricals Ltd.,
(High Pressure Boiler Plant)
Tiruchirappalli - 620 014.

3.The Presiding Officer / General Manager (BS-Unit I & II)
Bharat Heavy Electricals Ltd.,
Tiruchirappallai - 620 014.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 3rd respondent in Ref. No.PU: ELECTION: 2022 dated 16.06.2022, quash the same insofar as rejecting the nomination of the Petitioner Union to contest elections by secret ballot to be held on 23.06.2022 amongst the registered Trade Unions of BHEL, Trichy Unit to elect representative Union and consequently direct the respondents to accept the nomination of the Petitioner Union and include the name of the petitioner union in the list of valid nominations and allow the Petitioner Union to participate in the election to be held on 23.06.2022 to elect the representative union in BHEL Trichy or any other subsequent date as may be fixed by this Court.

For Petitioner	:	Mr.Ajay Kose for Mr.A.Rahul
For Respondents	:	Mr.M.Ajmal Khan, Senior Counsel for Mr.S.Raguvaran Gopalan.



ORDER

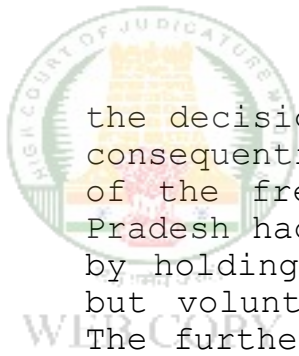
The petitioner herein is a Trade Union, registered under the provisions of the Trade Unions Act, 1926. The second respondent herein had issued a Circular dated 08.06.2022 for holding election by secret ballot on 23.06.2022 amongst the Registered Trade Unions of BHEL, Trichy Unit to determine the representation on the BHEL Joint Committee at the Corporate level and Plant & Shop Councils at Unit level. Among the eligibility criteria for Trade Union to contest the elections for reconsideration of the Joint Committee of BHEL, Trade Unions registered atleast one year before the date of notification of the secret ballot and are functioning exclusively to represent the interests of the employees of BHEL, shall be entitled to contest the elections. The petitioner's nomination submitted on 13.06.2022 for participating in the election, came to be rejected through the impugned order dated 16.06.2022, on the ground that since the name and the bye-laws of the Union which were amended on 24.08.2022, whereby, the membership of "regular employees of BHEL, Trichy" was inserted in place of "contract employees of BHEL, Trichy and any employee above 18 years of age" and therefore, petitioner Sangam has been exclusively representing the regular employees of BHEL only with effect from 28.04.2022, which is less than one year prior to the date of the election notification.

2. While the learned counsel for the petitioner submitted that the amendment of the bye-laws will not change the date of registration of the Trade Union and since the Trade Union has been in existence from 2011 onwards, they are eligible to contest the election. It is also his submission that the eligibility criteria does not refer to regular employees of BHEL and that their Union had been representing the regular employees from the inception, which is evidenced in the Form E submitted by them in the year 2021.

3. Per contra, the learned Senior Counsel appearing for the respondents raised a preliminary objection that the writ petition itself cannot be maintained since the Joint committee is not the creation of statute, but it is voluntary in nature. He further submitted that the existence of the petitioner's Trade Union was never known to them until 06.05.2022 and since the eligibility criteria of the petitioner Trade Union revolves around various factual verifications, the same could be done only by way of a civil suit or an election petition. In support of his contention, the learned Senior Counsel placed reliance on three decisions.

4. I have given careful consideration to the submissions made by both the counsel.

5. In the case of **Heavy Electricals Karmachari Trade Union, Bhopal Vs. Bharat Heavy Electricals Ltd, New Delhi and others** passed by the High Court of Madhya Pradesh in M.P.No.3133 of 1986, when



the decision of the Joint Committee of BHEL was challenged, with the consequential prayer for holding fresh election for reconstitution of the fresh Joint Committee was made, the High Court of Madhya Pradesh had dismissed the petition on the ground of maintainability, by holding that Joint Committee is not the creation of a statute, but voluntary in nature and is not controlled by the Management. The further appeal against the order of Madhya Pradesh, before the Supreme Court of India in S.L.A.Civil No.3000 of 1989 was dismissed on 26.04.1989.

6. In the case of **BHEL Karamchari Union Vs. The Chairman/Managing Director, BHEL and others**, a direction to BHEL for permission of the petitioner's Trade Union therein to participate in the elections of the Joint Committee was sought for. The High Court of Allahabad, while dismissing the writ petition on maintainability, placed reliance on the decision of the High Court of Madhya Pradesh between the same parties referred above, by holding that the writ petition is not maintainable as the Joint Committee is a voluntary body.

7. In the case of **N.Sekar Vs. BHEL Limited and others** made in **W.P. (MD)No.8640 of 2007 dated 05.10.2010**, a learned single Judge of this Court had questioned the maintainability of the writ petition challenging the decision of the Joint Committee of BHEL and for a consequential prayer for holding fresh secret ballot for the Trichy Union.

8. All the aforesaid three cases arises out of the BHEL/respondent company. It is true that Joint Committee is not a statute body but has been voluntary created for the convenience of collective bargaining of various Trade Union and is not controlled by the Management of BHEL. This aspect, as held in the case of Heavy Electricals Karmachari Trade Union, has been affirmed by the Hon'ble Supreme Court of India, while dismissing the appeal made by the Trade Union. If that be so, the present writ petition, arising out the same BHEL Company in connection with the conduct of the election for the Joint Committee would not be maintainable.

9. The learned counsel for the petitioner attempted to place reliance on a decision of the Hon'ble Supreme Court of India in the case **Food Corporation of India Staff Union vs Food Corporation of India and other** reported in **1995 Supp (1) SCC 678**, which came to be followed by this Court in two other decisions in the cases of the **Tamil Nadu Civil Supplies Corporation Vs. Tamil Nadu Civil Supplies Corporation, Employees Union** in **W.A.No.583 of 2000** and **Podhu Thozhilalar Sangam Vs. State of Tamil Nadu, Ministry of Labour and Employment and others** in **W.P.No.24353 of 2010**.

10. In all these aforesaid decisions, the maintainability of a writ petition against the conduct of the election for representation



on Joint Committee, was neither the issue nor was the ratio on such maintainability, laid down therein. On the other hand, the decisions cited by the learned Senior Counsel for the respondents arises from the conduct of elections for representation on Joint Committee at BHEL and the ratio that a writ petition in connection with the election, cannot be maintained has been upheld by the Supreme Court of India also. In this regard, I am of the view that the present writ petition itself is not maintainable and the proper remedy for the petitioner would be to wait for the completion of the elections and if aggrieved, challenge the same in a manner known to law.

11. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

vsm

To

1.The Chairman and Managing Director,
Bharat Heavy Electricals Ltdd,
Corporate Office,
Siri Fort,
New Delhi - 100 049.

2.The General Manager Incharge,
The Bharat Heavy Electricals Ltd.,
(High Pressure Boiler Plant)
Tiruchirappalli - 620 014.

3.The Presiding Officer / General Manager (BS-Unit I & II)
Bharat Heavy Electricals Ltd.,
Tiruchirappallai - 620 014.

+1 CC to M/s.K.PRABHAKAR, Advocate (SR-28083[F] dated 24/06/2022)

W.P.(MD) No.12642 of 2022
and W.M.P.(MD)Nos.8957 & 8964 of 2022
23.06.2022

RD(29.06.2022) 4P 5C