



W.P(MD)No.25032 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 22.11.2022

Pronounced on : 24.11.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.25032 of 2022

and

W.M.P.(MD)Nos.19127, 19130 and 19132 of 2022

Boiler Plant Employees Union / INTUC,
Rep. by its Working President,
R.Kalyanakumar (Staff No.2212544).

... Petitioner

Vs.

1.The Executive Director (Trichy Unit Head),
Bharat Heavy Electricals Limited,
Tiruchirapalli – 620 014,
Trichy District.

2.The Assistant General Manager (HR),
Bharat Heavy Electricals Limited,
Tiruchirapalli – 620 014,
Trichy District.

3.P.Balasubramani
(R3 is suo motu impleaded vide order dated
21.11.2022 in W.P.(MD)No.25032 of 2022 by
GRSJ)

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Order No.TP:HR:IR:INTUC dated 22.09.2022 issued by the 2nd respondent and quash the same and consequently direct the respondents to include and permit the representatives of the petitioner-union to participate in the meetings of Joint Committee for BHEL and Plant & Shop Council for Tiruchirapalli Unit and other Committees.

For Petitioner : Mr.K.Govindarajan,
For Mr.R.M.Makesh Kumaravel

For Respondents : Mr.Raguvaran Gopalan,
Standing Counsel for R1 & R2.
Mr.S.K.Mani for R3.

ORDER

Heard the learned counsel for the writ petitioner, the learned standing counsel for BHEL and the learned counsel for the impleaded third respondent.



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2.Boiler Plant Employees Union/INTUC was founded in the year 1965. It was duly registered under the Indian Trade Unions Act, 1926. Its registration has since been renewed on 20.07.2002. It is affiliated to Indian National Trade Union Congress (INTUC). It espouses the cause and interest of the labour working in BHEL, Trichirappalli. There are about 4,000 workmen employed in Tiruchirappalli Unit of BHEL. The petitioner had been constrained to move this Court since on account of factional dispute within the management has decided not to invite it to participate in the joint committee meeting to be held on 29.11.2022 at New Delhi.

3.The learned counsel on either side projected the stand set out in the respective pleadings.

4.The election to elect the office bearers of the petitioner/Union was held on 28.01.2022. It was announced that one R.Kalynakumar was elected as Working President and one M.Anthoni Alex Thiraviyam was elected as General Secretary. This was questioned by one P.Balasubramani. He disputed the validity of the election results. Both



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the parties went before the Joint Commissioner of Labour, Trichy. The said authority invited not only the contesting parties but also the management of BHEL, Trichy. It finally issued a communication bearing Na.Ka.No.Aa3/277/2022, dated 18.02.2022. A reading of the said communication indicates that the Joint Commissioner of Labour formed an opinion that the group led by Thiru.R.Kalyanakumar had succeeded in the election and that they are in-charge of union affairs. However, in the interest of industrial peace, the contesting parties were advised to resolve their differences peacefully across the table. The said communication was advisory and recommendatory in character and it was not meant to be a binding order. However, feeling aggrieved by the same, the third respondent filed W.P.(MD)No.4009 of 2022. Thiru.R.Kalaynakumar as well as Thiru.Anthoni Alex Thiraviyam were shown as respondents 3 and 4 in the said writ petition. The writ petition was disposed of on 21.03.2022 with the following directions:-

“6.In view of the fact that there is an apprehension on the part of the petitioner and in order to protect the interest of the parties, this Court is inclined to pass the following orders:-

(i)The order impugned dated 18.02.2022 passed by the Joint Commissioner of Labour is kept in abeyance for a period of eight weeks from today ie., 21.03.2022;



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(ii)The petitioner and the respondents 3 and 4 are at liberty to approach the competent Court of law for redressal of their grievance and they are at liberty to file appropriate application seeking any other interim relief;

(iii)If the parties have not resorted to any such relief, then the impugned order will be in operation, after a lapse of eight weeks.”

5. Aggrieved by the same, Thiru.R.Kalyanakumar filed W.A.(MD)No.324 of 2022. The Hon'ble Division Bench vide order dated 26.04.2022 disposed of the writ appeal in the following terms:-

“5.That part of the order by which the writ petition is not entertained, need not be interfered with. However, further directions, in the facts of this case, according to us, were unwarranted and therefore the same needs to be and are set aside, with specific reference to para:6 of the order under challenge.”

6. Thereafter, Thiru.P.Balasubramani invoked the provisions of Right to Information Act and elicited information from the Joint Commissioner of Labour that he had not formally recognized any faction



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as having succeeded in the intra union elections. Based on the said clarification issued on 20.07.2022, Thiru.P.Balasubramani submitted a representation to the management. Based the same, the management passed the impugned order.

7.The learned counsel for the third respondent disputed not only the validity of the election results but even the holding of the meeting. He would further contend that the venue where the election was claimed to have been conducted could hardly accommodate 100 persons. The learned counsel relied on the following decisions:-

“(i) (1994) ILLJ 294 Raj [Fateh Singh Solanki and Others vs Rastriya Mill Mazdoor Sangh and Others]

(ii) (2000) ILLJ 117 Pat [Bokaro Steel Workers' Union vs. State of Bihar and Others]

(iii) (2004) ILLJ 6 Mad [Kovai Periyar Maavatta Dravida vs. Commissioner of Labour] and

(iv) Sanjay Sitaram Khemka vs State of Maharashtra and Other in Special Leave Petition (Crl.) No.4131 of 2005, dated 05.05.2006.”



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8.The proposition canvassed by the learned counsel for the third respondent is that the dispute between rival claimants in a union can be decided only by a civil Court. The third respondent has therefore rightly instituted O.S.No.199 of 2022 on the file of District Munsif Court, Tiruchirappalli. Since the suit is yet to be disposed of, the management has rightly decided to await suit results. He pressed for dismissal of the writ petition.

9.I carefully considered the rival contentions and went through the materials on record. Before the management, there were competing factions. All that the management stated was that the person seeking representation must get a formal direction in their favour from the competent Court. This stand taken by the management in my view is perfectly reasonable and I, therefore, reject the challenge to the impugned communication dated 22.09.2022 issued by the second respondent.

10.It is equally well settled that when the main relief is negatived, the consequential relief also has to go. Such a technical approach can be



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taken in civil proceedings. I do not want to adopt such an approach in this case. The management has a policy of inviting six unions to take in the joint committee meeting that are annually held. To chose the top six participating unions, the management conducts an election. For the year 2022, such an election was held on 23.06.2022. The number of votes secured by each union is as follows:-

Name of the Union	Affiliation	No. Allotted	No. of Votes Secured
Bioler Plan Employees Union	INTUC	1	579
BHEL Mesia Thozhilalar Sangam	AITUC	2	382
Boiler Plant Worker Union	PJTM (NDLF)	3	115
Boiler Plant Dr.Ambedkar Employees Union	NFITU (DHN)	4	271
BHEL Employees Progressive Union	LPF	5	938
BHEL Mazdoor Sangam	BMS	6	571
BHEL Labour Liberation Front	---	7	310
BHEL Anna Workers Union	ATP	8	738
Bharath Heavy Electricals Workers' Union	CITU	9	568



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11.It is interesting to note that CITU and AITUC have secured only 568 and 382 votes respectively and are not figuring among the top six. I went through the contents of the representation submitted by Thiru.P.Balasubramani. It has been enclosed at Page No.45 of the typed set of papers filed by the management. Thiru.P.Balasubramani in his representation dated 27.02.2022 does not assert that he and his team have numbers on his side. On the other hand, he only calls upon the management not to invite the rival group. In fact, he goes to the extent of calling upon the management not to hold any joint committee meeting at all. It is also seen that Thiru.P.Balasubramani has filed O.S.No.199 of 2022 on the file of District Munsif Court, Tiruchirappalli. It is not in dispute that though the suit was filed way back in April 2022, till date, the third respondent has not obtained any interim order restraining Thiru.R.Kalayanakumar as well as Thiru.M.Anthoni Alex Thiraviyam who are figuring as defendants 3 and 4 in the said suit. The Joint Commissioner of Labour no doubt had clarified that he had not passed any formal order recognizing any group. But the Joint Commissioner of Labour had not rescinded his earlier communication dated 18.02.2022. All that he had stated was that he has not passed any authoritative order



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and that it was only advisory in nature. Since Thiru.P.Balasubramani felt aggrieved by the said communication, it was he who filed W.P.(MD)No.4009 of 2022 before this Court. From a reading of the communication dated 18.02.2022 issued by the Joint Commissioner of Labour, Trichy, it is seen that the team led by Thiru.R.Kalyanakumar is having majority.

12.Of course, the Joint Commissioner of Labour cannot decide who is in control of the union that would be beyond his powers. But I can certainly derive assistance from the said communication. The learned counsel for the petitioner produced the original register which contains the particulars of the members of the union who are on the side of the petitioner. Their names and registration numbers have been given along with signatures. It was also verified by the Joint Commissioner of Labour. Yet I do not want to go entirely by the said material. Thiru.P.Balasubramani was present before me on 22.11.2022. Thiru.R.Kalyanakumar and Thiru.M.Anthoni Alex Thiraviyam were also present in person. Through their counsel, they readily agreed for a show of strength. In this case, there is no dispute regarding the total



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membership or even the identity of workmen. However, Thiru.P.Balasubramani was not ready to accept the challenge. The suggestion given by the Court could have even provided an instant solution even to the suit proceedings. But Thiru.P.Balasubramani was not ready to mobilize and present them. If Thiru.P.Balasubramani had accepted the suggestion, I would have appointed an Advocate Commissioner and fixed a venue in Trichy itself to decide who has majority. But Thiru.P.Balasubramani declined the proposal.

13. More than anything else, what tilts the case in favour of the writ petitioner is that their union is affiliated to INTUC and the All India President has given a written communication addressed to the management on 13.01.2022 that he has recognized the election of Thiru.R.Kalayanakumar and Thiru.Anthoni Alex Thiraviyam and their team. On the other hand, Thiru.P.Balasubramani and few others have been removed from union itself. The original letter issued by the All India President/Dr.G.Sanjeevareddy Ex.MP has been produced before me. If the group led by Thiru.R.Kalyanakumar is not allowed to take part in the proposed meeting to be held on 29.11.2022, then it would mean



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Trichy unit of INTUC would not have any representation at all. That would not be in the interest of industrial peace. The fact remains that INTUC managed to secure third in the rank in the election held on 23.06.2022 for representation in the joint committee meeting. INTUC should therefore not be denied representation.

14.I am inclined to come to the following conclusion primarily for five reasons. (a) The letter dated 13.01.2022 issued by the All India President INTUC recognizing the group led by Thiru.R.Kayanakumar. (b) *Prima facie* findings inferable from the advisory communication dated 18.02.2022 issued by the Joint Commissioner of Labour, Trichy. (c) The failure of Thiru.P.Balasubramani to get any interim order before the Civil Court in O.S.No.199 of 2002 filed by him way back in April 2022. (d) Non-grant of relief would lead to non-representation of Trichy unit of INTUC, even though it has secured third rank. and (e) The non-acceptance of the proposal for immediate show of strength.

15.For these reasons, I direct the respondents to invite and permit the group led by Thiru.R.Kalyanakumar to participate in the petition



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mentioned meetings. This order would be subject to any order including interim order to be passed by the Civil Court in O.S.No.199 of 2022 filed by Thiru.P.Balasubramani faction.

16.The writ petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

24.11.2022

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G.R.SWAMINATHAN, J.

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**Pre-Delivery Order in
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