

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO.860 OF 2023**

ORDNANCE FACTORY KAMGAR UNION BHUSAWAL, THROUGH  
OFFICE PRESIDENT SHRI RAJENDRA NAVINCHANDRA ZHA  
VERSUS  
NILESH VIJAY DESHMUKH AND OTHERS

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Advocate for Petitioners : Mr. P.V. Barde, Advocate h/f  
Ms. C.R. Chaudhari Kutti

AGP for Respondent No.3 : Mr. S.R. Yadav Lonikar

Standing Counsel for Respondent No.4 : Mr. Bhushan Kulkarni

Advocate for Respondent No.1 : Mr. Abhaykumar Ostwal, Advocate  
i/b Mr. Vikram L. Bhange and Mr. Navnath S. Kalyankar

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**CORAM : NITIN B. SURYAWANSHI, J.**

**DATE : 20<sup>th</sup> JULY, 2023**

**PER COURT :**

1. By this petition filed under Articles 226 and 227 of the Constitution of India, petitioner takes exception to the order dated 02/01/2023, passed by learned Member, Industrial Court, Jalgaon, below Exhibit-U-2 in Application (ICTU) No.01/2022, thereby disposing of the application Exhibit-U-2 by giving following directions:-

*"1] Deputy Registrar under Trade Unions Act, 1926, Division Nashik, Nashik is appointed as an Administrator of Ordnance Factory Kamgar Union, Bhusawal.*

*2] The Administrator is directed to take possession of the properties including it's office, books of account, entire record as well as bank accounts opened in the name of the Union, if required with the help of Police Authority.*

*3] The Administrator is further directed to hold elections of the Ordnance Factory Kamgar Union, Bhusawal as prescribed under its Constitution within a period of 02 months and to handover the entire record to new Executive Committee/Office Bearers that may be elected in the elections conducted by the Administrator.*

*4] Applicant as well as Respondent Nos.2 and 3 and Executive Committee Members alleged to be elected in Annual General Body meeting dated 30.01.2022 and 10.12.2021 are restrained from acting and representing themselves as Office Bearers/Executive Committee Members of Ordnance Factory Kamgar Union, Bhusawal."*

2. Petitioner is the Ordnance Factory Kamgar Union, Bhusawal, and the petition is filed through it's President Rajendra Navinchandra Zha. Petitioner raised dispute before the Industrial Court, Jalgaon, that petitioner is a registered Union and tenure of it's Executive Committee as per Constitution of the said Union, is of one year. The Executive Committee is to be elected in the Annual General Body Meeting of the Union. It is claimed that Annual General Body Meeting of the Union was held on 01/01/2022, in which the President and the Committee Members were elected. The President after election, intimated the same to respondent No.3 Deputy Registrar of Trade Unions, on 01/02/2022. Respondent No.3 then called objections and no objections were received on the Executive Committee elected on 01/01/2022. Therefore, by following due procedure third respondent accepted and recognized the Executive Committee Members as validly

elected Executive Committee Members in the Annual General Body Meeting dated 01/01/2022. Thereafter, respondent Nos.1 and 2 disputed legality of the Annual General Body Meeting dated 01/01/2022. Respondent No.2 claimed to be Executive President of the Union and respondent No.3 has claimed to be the Secretary. Petitioner, therefore, filed the said proceedings seeking declaration that claim of respondent Nos.1 and 2 that they are elected Office Bearers of the Union, is illegal and they be restrained from interfering in the day to day affairs of the Union. In the said proceedings, application Exhibit-U-2 is filed by the petitioner seeking interim relief. Respondents appeared and resisted the claim by filing their respective say. After hearing the parties, Industrial Court has given the aforestated directions. Hence, the present petition.

3. Heard learned advocate for petitioner, learned Assistant Government Pleader for respondent No.3, Learned Standing Counsel for respondent No.4 and learned advocate for respondent No.1. Perused the writ petition memo, annexures thereto, the impugned order and affidavits-in-reply filed by the respondents.

4. Learned advocate for petitioner states that petitioner is entitled to contest the election of Union President and he is validly elected President. By relying on clause 4(c) of the Constitution Rules and Regulations of the petitioner Union, he submits that

though the President is dismissed employee and is prohibited from entering into the premises of Ordinance factory, he can be admitted as honorary member. He, therefore, submits that the Industrial Court has erred in passing the impugned order by giving said directions. In fact, interim relief as prayed by the petitioner in application Exhibit-U-2, ought to have been granted by the Industrial Court.

5. Learned advocates for respondents, on the other hand, strongly opposed the petition by relying on affidavits-in-reply filed by them and by relying on clause 4(a) of the Constitution, which lays down eligibility criteria for becoming Member of the Union. Decision passed by the learned Single Judge of this Court at Nagpur Bench, in ***Writ Petition No.5084 of 2019 [Ordinance Factory Kamgar Union Vs. The Presiding Officer]***, is also relied upon. Revised rules for recognition of unions of workers are pointed out by learned advocate for respondent No.4 in his reply. According to which, dismissed employee is not entitled to be the Office Bearer and Member of the Executive Committee of Union.

6. Learned advocate for petitioner, in reply, submits that there is difference between becoming Office Bearer of union and recognition of union. The issue before this Court is only in respect of the Office Bearer of Union and not of the recognition of Union.

7. Record indicates that President of the petitioner Union is a dismissed employee of respondent No.4 Ordnance Factory. Communication addressed to the General Secretary of petitioner Union by the Ministry of Defence, dated 26/02/2015, refers to the directives issued by the Ordnance Factory Board on 24/02/2015, wherein it is stated that,

*"02. Shri Rajendra Jha, being a dismissed employee, cannot hold the post of an Office Bearer of a recognized Union, as per Recognition Rules, 1995 and Ministry of Defence directive No.11(5)/2004/D(JCM) dated 07/04/2005. Since the Union has been found in violation of the Govt. directives on the subject, it is hereby directed to suspend/withdraw all the facilities of a recognized Union to Ordnance Factory, Bhusawal Kamgar Union, affiliated to AIDEF, with immediate effect, till such time the Union takes corrective action to alleviate the above anomaly."*

8. In the communication addressed to the General Secretary of petitioner Union by the Ministry of Defence, dated 25/02/2020, pursuant to the decision in Writ Petition No.5084/2019, it is mentioned that,

*"3. The Hon'ble High Court has dismissed the subject Writ Petition upholding the decision of this Hon'ble Tribunal pronounced vide Order 31/05/2019 wherein the Tribunal rejected the request of the petitioner Union for grant of Interim Relief to allow the President of the petitioner union to address the Gate Meetings. From the observation of the Hon'ble High Court, Nagpur the following is evident:-*

*a) That the criteria of "**dismissed employee**" mentioned para-10(c) of 1995 Rules, para 2(iii) of 1996 Rules (Procedure for recognition) & Para 2(iii) of 1997 Rules (Procedure for recognition) is applicable to the Office*

*Bearers and Member of Executive Committee of all the recognized Unions/Federations including the petitioner Union which was earlier recognized under the erstwhile rules dated 01/06/1950 which is now stands recognized under the fresh Rules.*

*b) The Unions which were already recognized at the time of promulgation of fresh rules in 1995 are also bound to follow the terms and conditions of the fresh rules.*

*c) As per para (4) of O.M.No.14(5)/95/D(JCM) dated 04/03/1997, the Unions who were already recognized at the time of issuance of the said O.M. were not required for verification of membership. The contents of para No.4 allow the continuance of recognition granted to Unions under the erstwhile rules without the need for verification of membership only. There is no exemption granted to such Unions from application of condition of recognition mentioned at Para-10(c) of 1995 Rules, para 2(iii) of 1996 Rules (Procedure for recognition) and para 2(iii) of 1997 Rules (Procedure for recognition).*

*d) Facility of Union membership or to remain in the Federation/Union as Office bearer is only allowed to bonafide employees and Shri Jha is not a bonafide employee as he was dismissed from service under the government rules. Dismissed employee cannot be treated at par with bonafide employee under the rules."*

9. The Office Memorandum issued by the Government of India, Ministry of Defence, dated 26<sup>th</sup> March, 1996, in respect of recognition of Unions of workers provides that applications of recognition should be accompanied by following documents:-

- (i) A copy of the Rules of the Union.
- (ii) A copy of certificate of Registration under Trade Union Act, 1926.
- (iii) A list of office bearers and members of the Executive Committee of the Union, confirming that none of them is the

person dismissed/removed/discharged from Government service on disciplinary grounds.

10. Industrial Court after going through the record and hearing rival submissions has held that according to petitioner Annual General Body Meeting was held on 30/01/2022. In the proceedings, discussions on Subject Nos.1 to 4 are written on page Nos.7 and 8. Subject No.5 was regarding election of New Executive Committee for the year 2022-23. After resolution on Subject No.4, signatures of about 94 Members are obtained. From perusal of signatures, it appears that 11 Members are shown in excess. Thus, there were only 83 signatory Members present in the meeting. Undisputedly, there are 382 Members of the Union. As per by-laws, the quorum i.e. 1/4<sup>th</sup> Members comes to 96 Members, therefore, there was no quorum. It is further held that the procedure adopted by petitioner while conducting meeting is apparently illegal. Signatures of the Members present in the meeting are to be obtained at the beginning or at the end of the meeting. After passing resolution on first four subjects, signatures are obtained and thereafter, resolution on Subject No.5 is written. Therefore, it can be said that the said resolution, electing Executive Committee Members for the year 2022-2023, is not passed in the said meeting as the same is written after signatures of the Members.

It is further observed that out of 94 Members, attendance of 49 Members is disputed. In the said Annual General Body Meeting out of 29 Executive Committee Members, 5 posts of Executive Members are kept vacant and only 24 Members were shown as elected and even out of that, 5 Executive Committee Members have submitted their resignations. Their resignations are not denied by the petitioner. It is held that, *"Thus, there is a big clog on the elections of Mr. R. N. Jha and his Executive Committee Members in the Annual General Body Meeting dated 30/01/2022. It seems that, Mr. R. N. Jha wants to impose himself as a President of the Union by fabricating the record, despite his eligibility is subjudice before CGIT, Nagpur"*.

11. Industrial Court considered the fact that respondent Nos.1 and 2 have claimed that they are elected in the Annual General Body Meeting dated 10/12/2021. Therefore, tenure of their Executive Committee has come to an end on 10/12/2022 and the tenure of alleged Executive Committee of Mr. R. N. Zha has come to an end on 30/01/2023. Thus, elections of the Executive Committee of the petitioner Union have become due. Considering this aspect the Industrial Court, with a view to avoid claim of both the parties that they have been elected by passing resolutions, has appointed Deputy Registrar under Trade Unions Act, 1926, Nashik, as Administrator of the petitioner Union and directed him to take

possession of the properties including office, books of account, entire record as well as bank accounts opened in the name of the Union, if required with the help of Police Authority. The Administrator is also directed to hold elections of petitioner Union as per its Constitution, within a period of two months from the date of order i.e. 02/01/2023. The petitioner President Mr. R. N. Zha and respondent Nos.1 and 2 are restrained from acting and representing themselves as Office Bearers/Executive Committee Members of the petitioner Union.

12. The Industrial Court has properly appreciated the record and has judiciously exercised discretion while passing the well reasoned order. There is no illegality or perversity in the order impugned in the present petition. No case is made out by the petitioner to warrant interference in the impugned order in exercise of extraordinary writ jurisdiction. Writ petition being devoid of merits is dismissed.

13. President of the petitioner Union undertakes to handover record of the Union to the Administrator within a period of one week from the date of uploading of this order. The said statement is recorded as undertaking to this Court.

**(NITIN B. SURYAWANSHI, J.)**