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W.P.No.27676 of 2022 & W.M.P. No.26951 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.27676 of 2022 &
W.M.P. No.26951 of 2022

Avadi Thin Oorthi Thozhilaga
Thozhilalar Munnetra Sangam
(Regd. No. CPT/654)

Represented by General Secretary,, Mr. I. Selvaraj
HVF Avadi, Chennai 600 054

... Petitioner

Vs.

1. The Directorate of Defence (Coordination and Service)
Represented by its Secretary,
Ministry of Defence
Government of India
10A, SK Bose Road, Kolkatta.

2. The Chief General Manager
HVF, Avadi, Chennai 600 054.

3. The Labour Welfare Officer (HVF)
HVF, Avadi, Chennai 600 054.

4. The Assistant Labour Commissioner (Central)
No.26, IIIrd Block, 5th Floor,
Shastri Bhavan, Haddows Road,
Nungambakkam, Chennai 600 006.

...

Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue an order in the nature of the Writ of Mandamus directing the 2nd respondent to implement the order passed by the 4th respondent in No.8/10/2018-B4 dated 04.09.2018.

For Petitioner : Mr. B.K. Girish Neelakantan
For R1 to R3 : Mr.K. Subbu Renga Bharathi,
Central Government Standing Counsel

ORDER

The petitioner is a trade union in the name and style of Avadi Thin Oorthi Thozhilaga Thozhilalar Munnetra Sangam, in HVF, Avadi, represented by its General Secretary, I.Selvaraj. The writ is praying for issuance of directions to the 2nd respondent, the Chief General Manager, HVF, Avadi, Chennai, to implement the orders dated 04.09.2018 for conferment of the status of "protected Workmen" on the nineteen office bearers of the petitioner Union based on their applications dated 01.02.2018 and 13.02.2018.

2. Briefly the facts of the case are as follows:

2.1. There is a provision in accordance with sub-rule 4 of Rule 61



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of the Industrial Disputes (Central) Rules, 1957 for the employer to declare conferment of the status of 'protected workmen' from amongst the employees. Accordingly the petitioner Union furnished a list of 19 office bearers and requested vide letters dated 30.04.2012, 12.08.2016, 02.01.2017, 01.02.2018 and 13.02.2018 for conferment of the status. The 2nd respondent in response to the representation dated 13.02.2018 had informed that "two different bodies are claiming allegiance to Avadi Thin Oorthi Thozhilaga Thozhilalar Munnetra Sangam' both quoting the same registration number CPT/654 and that under such dispute, the issue raised on publication of list of protected workmen of their Union cannot be looked into at this juncture". This was vide their notification dated 20.02.2018. Based on this, the petitioner approached the Assistant Labour Commissioner (Central), Chennai who decided the matter in favour of the petitioner vide order dated 04.09.2018. Subsequently, on 15.09.2021 and 30.04.2022, the petitioner approached the 2nd respondent requesting him to implement the order of the Assistant Labour Commissioner (Central), Chennai (4th respondent). On 11.05.2022, the 2nd respondent while responding to the representation dated 30.04.2022 of the petitioner gave reasons as to why their request cannot be acceded to. Another representation dated 13.05.2022 was submitted by the



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petitioner furnishing the list of office bearers again for recognition as protected workmen. This evoked no response and hence the Writ Petition.

3. Mr. B.K. Girish Neelakantan, learned counsel for the petitioner would contend that the entire version of 'two factions' in the existing petitioner Union is an imaginary one and that even in 2020 when such a doubt arose, it was the petitioner's representation which was considered formally. According to him the petitioner Union was entitled to have its representation as protected workmen and the 2nd respondent has intentionally avoided the same under some pretext or other. He also added that the orders of the Assistant Labour Commissioner (Central), Chennai, have to be scrupulously complied with by the 2nd respondent and such a non compliance tantamount to defying valid legal orders.

4. Per contra Mr.K. Subbu Renga Bharathi, learned Central Government Standing Counsel for the respondents 1 to 3 would contend that the provisions of Sections 33(3) and 33(4) of the Industrial Disputes Act, 1947 do provide for recognition of some workmen as 'protected workmen' and that the existing petitioner Union has split into two as is evidenced by the contents of O.S. No.226 of 2015 before the Additional



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District Munsif, Poonamallee, filed by the present petitioner in his capacity of General Secretary of the said Union which was dismissed on 14.07.2023. The facts of the case showed that two factions exist. Therefore, it would be difficult to adjudicate as to which faction is the official one. He also contended that it was not the task of the 2nd respondent to adjudicate and declare the official faction in such instances of intra-union rivalry and the Assistant Labour Commissioner (Central), Chennai, was wrong in issuing such an order of recognising all the 19 office bearers names forwarded by the present petitioner as protected workmen. He also pointed out that only 39 of the total strength of 3938 workmen can be recognised as protected workmen and the HVF Mazdoor sangh having requested 30 of the 39, it would be difficult to accommodate the present petitioner's Union members unless they come out clear on their status as one union. Hence the learned counsel prayed for dismissal of the writ and also setting aside the orders of the Assistant Labour Commissioner (Central), Chennai.

5. In order to have more clarity on the conferment of the status 'protected workmen' the following explanations are essential.



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Section 33(3) of the Industrial Disputes Act reads that

"For the purpose of this sub section, a protected workman in relation to an establishment, means a workman who, being a member of the executive or other office bearer of a registered trade union connected with the establishment, is recognized as such in accordance with rules made in this behalf"

Section 33(4) of the Industrial Disputes Act, 1947 reads that

"In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one per cent. of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and



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the manner in which the workmen may be chosen and recognised as protected workmen."

The order of the Assistant Labour Commissioner (Central), Chennai, has further defined it as,

"As per Section 33(4) of Industrial Disputes Act, 1947 read with rules 61(1) of the Industrial Disputes (Central) Rules, 1957, the union has to fulfill the following pre-condition to the status of protected workmen as follows:

- 1. The union should be a registered trade union connected with the concerned establishment and the recognition is not mandatory.*
- 2. The union should submit the list of office bearers to the concerned management to avail the status of protected workmen before 30th April of every year.*
- 3. The union should ensure that all office bearers to seek the status of protected workman should be the workmen of the concerned establishment.*

Thus the most important prerequisite is that the union should be a



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registered one. There is no doubt that they had a registration No.CPT/654. But the contents of the judgment in O.S. No.226 of 2015 pronounced on 14.07.2023 are clear that there are two factions. In fact in this suit (O.S.No.226 of 2015) filed by the present petitioner it was observed as "*P.W.1 has failed to show that he is the General Secretary of the Sangham at present*". This according to me is the last nail in the coffin. Therefore, the maintainability of this writ itself is doubtful. In fact Ex.B5 adduced in the O.S. No.226 of 2015 is the xerox copy of the proceedings dated 23.01.2021 made in General Body Meeting regarding which P.W.1 (the present petitioner) had deposed that "he admits that the 1st defendant (in the O.S. No.226 of 2015) is the President of the Union and that the defendants are the office bearers of the union". Such is the glaring observation in the judgment that the present petitioner's claim in this writ petition also holds no merit.

6. Moreover, according to the 2nd respondent the latest membership verification conducted on 08.07.2019 and 09.07.2019 revealed that the petitioner union secured only 18 out of the 3709 votes which clearly shows that they have a dismal strength and that too with two factions it gets further divided. Though a membership list is



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presented in this Writ Petition, the contents of the affidavit filed by the 2nd respondent as well the contents of the letter dated 11.05.2022 are more convincing and have to be accepted. The Joint Labour Commissioner (Central), Chennai, has not clarified on the points raised by the 2nd respondent in their letter dated 20.02.2018. In such circumstances, the Assistant Labour Commissioner (Central), Chennai, declaring 'the issue of intra union rivalry cannot restrain the above nineteen office bearers to avail the status of 'protected workmen' under Section 31(4) of the Industrial Disputes Act, 1947, is illogical and has no basis. Such traditional decision is liable to be quashed.

7. In the result, the Writ Petition is dismissed. No costs. Consequently connected Writ Miscellaneous Petition is closed. The orders dated 04.09.2018 of the Assistant Labour Commissioner (Central), Chennai, is also set aside.

30.10.2023

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Index : yes/no
Speaking /Non speaking Order



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R.HEMALATHA, J.

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