



WRIT APPEAL(MD)No.1422 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	24.07.2023
Date of Judgment	08.08.2023

CORAM

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**WRIT APPEAL(MD)No.1422 of 2022
and
CMP(MD)No.11486 of 2022**

**P.Balasubramani : Appellant/Suo motu
impleaded 3rd Respondent**

Vs.

**1.Boiler Plant Employees Union/INTUC,
Represented by its Working President
Shri.R.Kalyanakumar (Staff No.2212544),
Bharat Heavy Electricals Limited,
Tiruchirapalli-620 014. : Respondent/Petitioner**

**2.The Executive Director (Trichy Unit Head),
Bharat Heavy Electricals Limited,
Tiruchirapalli-620 014.**

**3.The Assistant General Manager (HR),
Bharat Heavy Electricals Limited,
Tiruchirapalli-620 014,
Tiruchirapalli District. : Respondents/Respondents 1 and 2**



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Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order, dated 24.11.2022 made in W.P.(MD)No.25032 of 2022 on the file of this Court.

For Appellant	: Mr.S.K.Mani
For R1	: Mr.Isaac Mohanlal Senior Counsel for Mr.R.M.Makesh Kumaravel
For R2 and R3	: Mr.Raguvaran Gopalan

J U D G M E N T

D.BHARATHA CHAKRAVARTHY, J.

This Writ Appeal is directed against the order of the learned Single Judge of this Court, dated 24.11.2022 in W.P.(MD)No.25032 of 2022, in and by which the writ petition was disposed of by directing the respondents in the writ petition to invite and permit the group led by Thiru.R.Kalyanakmar, the petitioner therein to participate in the petition mentioned meetings. The learned Single Judge also made the order subject to any order including interim order that may be passed in the civil suit pending between the parties.



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1.1. The factual matrix in which, the case arises is that the first respondent, namely, Bharat Heavy Electricals Limited recognizes Trade Unions to participate in the meetings to represent the interest of the workman, based on the votes secured by the various Unions. Accordingly, for the year 2002, election was held. The Trade Union by name Bioler Plant Employees Union/INTUC, represented by the President, Mr.R.Kalyanakumar (the writ petitioner), secured 579 votes and as such, was entitled to represent in the meetings. At this juncture, the appellant/third respondent submitted a representation to the Management stating that they have already filed a civil suit to declare their election as valid and thereby questioning the election under which, the petitioner lead faction was elected and requested that they should not be allowed to represent the Union in the meetings. Based on the said representation, the first respondent Management addressed the Joint of Commissioner of Labour, Trichy. The Joint Commissioner of Labour, Trichy had submitted a report that the writ petitioner faction is the one, which has majority and having been duly elected.



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2. However, vide letter dated 12.05.2022 he communicated that he had issued only an advisory letter on 18.02.2022 to both the factions and that he does not have power or jurisdiction and pass orders as to which of the rival groups of office bearers of the Trade Union is holding majority and that the same has to be decided by the civil Court.

2.1. Based on the said opinion, an order dated 22.09.2022 was passed by the Management by requiring the writ petitioner to obtain suitable order from the civil Court to recognize the office bearers of the Union. Challenging the said order, the writ petition was filed.

3. The learned Single Judge, even though held that the order passed by the Management was in order, further found (i) that the letter dated 13.01.2022 issued by the All India President INTUC only recognized the writ petitioner; (ii) the *prima facie* findings can be inferable from the communication of the Commissioner of Labour, Trichy; (iii) the appellant Thiru.B.Balasubramani faction even though



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filed a civil suit, did not obtain any interim order in the civil Court; (iv) if relief is not granted in the writ petition that would lead to a situation, where the Union itself would not get a representation even though it has secured the third rank. The learned Single Judge had also during the course of the hearing suggested to the respondents for a show of strength before the Court, which has been refused by the appellant/third respondent. For all the above reasons, the learned Single Judge allowed the writ petition on the terms aforementioned.

4. Feeling aggrieved, the third respondent in the writ petition, namely, Mr.P.Balasubramani has filed the appeal.

5. Mr.S.K.Mani, the learned counsel appearing on behalf of the appellant would submit that firstly, securing votes in respect of representation in the meetings has no connection with the internal election of the Union as such. The election of the writ petitioner lead factions is said to have been conducted in a tiny room, which cannot house the 750 persons said to have participated in the election. On the



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other hand, the election conducted by the appellant group was in a proper hall at Thanjavur and everyone participated and therefore, the civil Court is most likely to declare the election of the appellant lead group as valid. Even in the civil suit, the writ petitioner group is not cooperating and have filed application for rejection of plaint. He would further contend that when only the majority within the Trade Union is a relevant factor and when the same can only be determined by the civil Court, the impugned order has rightly been passed by the Management and the learned Single Judge having found the impugned order as in order, ought not to have proceeded to grant the relief.

5.1. He would submit that in this regard, a catena of Judgments categorically lay down that in respect of any dispute within the office bearers, it is only the civil Court, who is the competent authority.

6. Per contra, Mr.Isaac Mohanlal, learned Senior Counsel appearing on behalf of the respondent/writ petitioner would submit that firstly the election was properly conducted and he would produce the



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register in original for the conduct of elections. Secondly, he would submit that when the suit is filed and not even any interim order is obtained, there is no question of recognizing the appellant faction as the office bearers. Thirdly, he would submit that it is only the writ petitioner who had made a request and that request ought not to have been refused by the Management. Finally, he would submit that after the order of the learned Single Judge, the writ petitioner faction has been representing in the meetings and would therefore, submit that the appeal is without any merits.

7. We have considered the rival submissions made on either side and perused the material records of the case.

8. Firstly, it can be seen that though both the groups claimed that they conducted rival elections, it is only the first respondent/writ petitioner Kalyanakumar faction which has given a representation for permitting them to participate in the meetings. Eventhough the appellant factions claims to have conducted an election and have been duly



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elected, they have never given any requisition to permit them to participate in the meetings. Only upon the permission being granted to the first respondent/writ petitioner faction, they made their objections. As a matter of fact, the appellants filed a civil suit to declare that they are the duly elected office bearers. Having filed the suit, they had not obtained any interim order in their favour. Though there can be no two opinion that the matter has to be ultimately decided only by the civil Court, the only question is until such decision of the civil Court, which faction is to be permitted by the Management. The impugned order of the Management is to the effect that both the factions will not be permitted until an order is passed by the civil Court. That would lead to a situation where the Trade Union which has got the requisite number of votes in the common election would be left un-represented in the collective bargaining. The entire process of recognition is to enhance the quality of collective bargaining so that the Unions and through them the respective workmen are duly represented.



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9. In that view of the matter, the learned Single Judge has taken the criteria mentioned in paragraph No.14 of the order under appeal, whereby, the *prima facie* opinion of the Joint Commissioner, the non obtaining of interim order in the suit, and the recognition by the All India Federation etc. and has granted the relief. Therefore, no exception can be taken for granting such relief. In that view of the matter, we are unable to interfere with the findings and the directions given in the order under appeal. As between a positive plea to participate in the collective bargaining and the plea of the appellant let both not be permitted until the civil suit is decided, the view taken by the learned Judge to ensure representation of the workmen, as a Constitutional Court exercising the powers under Article 226 of the Constitution of India is with a view of protecting the fundamental rights of the workmen guaranteed under Article 19 (1) (c) of the Constitution of India is in order. The '*split the baby*' plea of the appellant has been dealt with by applying *Solomon's wisdom*.



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10. In the result, this Writ Appeal is devoid of merits and it is accordingly dismissed. Needless to mention that ultimately the rights of parties would only be determined in the pending civil suit, which liberty is preserved even by the learned Single Judge. There shall be no orders as to costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R.,J.) & (D.B.C.,J)

08.08.2023

NCC : Yes / No
Index: Yes/No
Internet: Yes/No
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Pre-Delivery Judgement made in
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