



W.P.No.9969 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25.09.2024
Pronounced on	29.10.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.9969 of 2023 and
W.M.P.No.10018 of 2023

Podhu Thozhilalar Sangam – CITU,
Rep.by its General Secretary,
Mr.A.Jenetan, S/o.Antony
Reg.No.504/CPT,
No.21 B, Vilakkadi Koil Street,
Kanchipuram District 621 501.

... Petitioner

Vs.

- 1.State of Tamil Nadu,
Rep by its Principal Secretary to Government,
Ministry of Labour and Employment,
Secretariat,
Fort St.George, Chennai 600 009.
- 2.The Commissioner of Labour,
Office of the Labour Commissioner,
DMS Complex, Teynampet,
Chennai 600 006.
- 3.The Deputy Commissioner of Labour (Conciliation -I),
Plot No.PB2, SIPCOT Campus,
Near IOB Bank,
Irugattukottai, Sriperumbudur Taluk,
Kancheepuram District.



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4.M/s.NSK Bearings India Pvt. Ltd.,
Rep. by its Management,
Plot No.A2, SIPCOT Oragadam Growth Centre,
Mathur Village,
Sriperumpudur Taluk,
Kanchipuram District 602 105.

5.Indian National Engineering Employees Union
Affiliated to INTUC,
Rep. by its President,
R.Aadhikesavan,
Plot No.A2, SIPCOT Oragadam,
Mathur Village, Sriperumbudur Taluk,
Kanchipuram District 602 105.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents 1 to 3 to hold election to determine the relative strength of all the registered Trade Unions in the fourth respondent Company by way of secret ballot to be conducted under the overall supervision of the 1st and 2nd respondents.

For Petitioner : Mr.N.G.R.Prasad for
Mr.S.Sivakumar

For Respondents : Mrs.M.Jayanthi, AGP for R1 to R3
Mr.G.Anand Gopalan for
M/s.Agam Legal Advocates for R4
Mr.V.Subramani for R5

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Mandamus to direct the respondents 1 to 3 to hold election to determine



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the relative strength of all the registered Trade Unions in the fourth respondent Company by way of secret ballot to be conducted under the overall supervision of the 1st and 2nd respondents.

2. Heard Mr.N.G.R.Prasad, learned counsel for the petitioner and Mrs.M.Jayanthi, learned Additional Government Pleader for the respondents 1 to 3 and Mr.Anand Gopalan, learned counsel for the fourth respondent and Mr.V.Subramani, learned counsel for the fifth respondent and perused the materials available on record.

3. Mr.N.G.R.Prasad, learned counsel for the petitioner submitted that the petitioner is a registered Union affiliated to CITU and it has been formed in the fourth respondent Company during the month of November 2020. Out of 207 permanent employees of the fourth respondent Company, 153 permanent employees are the members of the petitioner Union. The petitioner Union represents the majority of the employees of the fourth respondent Company. But the fourth respondent had entered into a long term settlement with the fifth respondent and it came to an end on 31.03.2022. The petitioner Union has given a charter



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of demands on 03.11.2020 and the fourth respondent felt to hold talk with the petitioner Union. Hence, the petitioner has raised the 2k dispute on 20.11.2020. The petitioner had given a fresh charter of demand on 29.12.2021. Hence, the petitioner had raised another 2k dispute on 13.12.2022.

4. The petitioner is the majority Union, but the fourth respondent continued to hold talks with the fifth respondent which is the minority Union. The petitioner Union had given a strike notice on 27.01.2023 by objecting the above attitude of the fourth respondent Company and went on strike from 11.03.2023. The petitioner Union had given a representation to the respondents 1 to 3 to hold election by secret ballot to determine the relative strength for the fourth respondent Union. Hence, the petitioner has filed this Writ Petition seeking direction against the respondents 1 to 3.

5. In response to the above submission of the petitioner, Mrs.M.Jayanthi, learned Additional Government Pleader for the



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respondents 1 to 3 submitted that according to the fourth respondent Company, only the fifth respondent is a recognized Trade Union and hence, negotiation with respective demands on behalf of the workmen has been made with the fifth respondent. The Conciliation Authority who conducted the periodical conciliation with regard to the demands raised by the petitioner Union had in fact issued a Government Order in G.O.Ms.No.135 dated 01.03.2024 and at the end of the failure of conciliation, had referred the matter to the Industrial Tribunal, Chennai. She further submitted that the intention of the petitioner is to paralyze the peaceful atmosphere prevailing in the fourth respondent Industry by making frequent demands and thereafter, withdrawing the same. The third respondent Conciliation Authority has got no obligation to conduct any sort of election and that too, through secret ballot system as demanded by the petitioner.

6. Mr.G.Anand Gopalan, learned counsel for the fourth respondent submitted that through various decisions of the Hon'ble Supreme Court and the High Court of Madras, it has been held that the elections cannot



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be ordered. There is no statutory right to the petitioner to seek for conducting election. Even in the States where statutory provisions are made for election, secret ballot has not been provided. In the State of Tamil Nadu, there is no law providing for election / secret ballot. Therefore, the Writ Petition has been filed without any legal right.

7. Mr.N.G.R.Prasad, learned counsel for the petitioner relied on the order of this Court held in ***W.P.No.24353 of 2010 dated 04.01.2011 (Podhu Thozhilalar Sangam (CITU) Vs. State of Tamil Nadu & others)***, in support of their claim for direction for election through secret ballot. It is emphasized on behalf of the petitioner that collective bargain is the fundamental concept of the Trade Unions.

8. On perusal of the above judgment, it is seen that the Company by name M/s.Foxconn India Private Limited itself has agreed to conduct election through secret ballot and hence, the said judgment cannot be cited stating that the legal position as to secret ballot has been settled. Once the Trade Unions and the Management come to an understanding to



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conduct any election for proving the strength of Union holding majority members, it is upto them to device any methods for conducting such elections. As such, in the State of Tamil Nadu, there is no law compelling elections in order to issue direction to the authorities for conducting election as claimed by the petitioner.

9. The learned counsel for the petitioner also cited a decision of the Hon'ble Supreme Court reported in *AIR 1995 SC 1344, in the case of Food Corporation of India Staff Union Vs. Food Corporation of India and Others*, to claim that similar directions have already been issued by the Court for conducting elections.

10. However, Mr.G.Anand Gopalan, learned counsel for the fourth respondent attracted the attention of this Court to the judgment of the Hon'ble Supreme Court held in the case of *Automobile Products of India Employees' Union Vs. Association of Engineering Workers, Bombay and Others reported in 1990 (2) SCC 444* and the Division Bench of this Court in the case of *MRF United Workers Union Vs. Government of Tamil Nadu in W.P.No.17991 of 2008 and W.A.No.674*



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of 2009 dated 08.09.2009, in support of his contention and submitted that there is no law for election in the State of Tamil Nadu and the employer and employees have followed the code of discipline, even then the secret ballot system has not been made as mandated.

11. No doubt if the Trade Unions are formed with the workmen of any Company, it should be for the purpose of ensuring the welfare of the workmen, especially, to make collective bargaining. In the instant case, the petitioner Union has stated that they have raised various disputes against the fourth respondent Company. If any reference is made by the Government to decide certain issues by the Industrial Tribunal, if it is proved that the Union which espouses the cause does not have the majority members, the dispute will fail in view of the lack of *locus standi* for the Union.

12. It is the consistent claim of the petitioner that the petitioner has got the highest number of members in its Union and the fourth respondent continues to make negotiations with the fifth respondent by



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ignoring the petitioner Union. The petitioner claims that the fifth respondent is a minority Trade Union and it is unfair on the part of the fourth respondent to hold negotiation with the fifth respondent by neglecting the interest of the majority workmen. It is not denied by the petitioner also that in the State of Tamil Nadu, there is no law mandating elections as claimed by the petitioner. In some cases decided by this Court, directions have been issued to conduct election through secret ballot, but it is at the instance and willingness shown by the Management itself to adopt the said procedure.

13. The learned counsel for the petitioner has submitted that frequent disputes has arisen in view of the unfair labour practice adopted by the fourth respondent Company.

14. In such case, an Union which has maximum strength of employees should be recognized for raising any dispute on behalf of the employees or to hold any negotiations with the Management. Unless the petitioner establishes that it has got majority strength of members, it is



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not possible for the petitioner to participate in any negotiations with the fourth respondent or expose the cause of the employees in accordance with the principles of collective bargaining. Even in the absence of any specific provision for conducting election, the State has got the obligation to device certain mechanism considering the constitutional mandates in the collective interest of the working force.

15. In the judgment of the Division Bench of this Court held in *W.P.No.17991 of 2008 dated 08.09.2009 (MRF United Workers Union Vs. Government of Tamil Nadu and Others)*, the summary of the International Labour Organisation principles on the right to collective bargaining has been stated as below:

“A. The right to collective bargaining is a fundamental right endorsed by the members of the ILO in joining the organization, which they have an obligation to respect, to promote and to realize, in good faith (ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up)



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B. Collective bargaining is a right of employers and their organizations, on the one hand, and organizations of workers, on the other hand (first-level trade unions, federations and confederations); only in the absence of these latter organizations may representatives of the workers concerned conclude collective agreements.

C. The right to collective bargaining should be recognized throughout the private and public sectors and it is only the armed forces, the police and public servants engaged in the administration of the State who may be excluded from the exercise thereof. ”

16. After considering the various methods devised by the States with regard to the method of verification of the members of the Union entitled for recognition, the course for verification is suggested as below:

“37. Having noted this scenario and considering that there is continuous strife in the company, in our view, the Court cannot simply remain a silent spectator. We are aware that the Court has its own limitations while exercising jurisdiction to issue appropriate writ or direction. On analyzing the provisions of [Article](#)



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19(1)(c), it recognizes the right to form association and also the mandate of Industrial Disputes Act that there should be recognized union and when there is a inclination of the State Government to accept a particular procedure, which is otherwise also accepted in different statutes throughout the country, in our view, the correct course will be to give a direction to the Commissioner of Labour to call upon the two unions to submit their membership details as per the Code of Discipline and examine their membership as provided under the Code over a period. In the event, there are any objections, the objections could be verified in the light of clause-7 of the Code of Discipline by personal interrogatories so as to arrive at the correct membership of either of the two trade unions. Alternative to this procedure namely, ballot system, which, although is recommended by the Committee of the ILO, is not accepted in any of the statutes which have been brought to our notice. The recommendations of the Committee can only be respected to this effect that there has to be a collective bargaining agent of the workmen, which is to be a truly and independent representative agent. As far as the methods suggested by the Committee is concerned, it would result into



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determination on the basis of the facts arrived at a particular point of time, which has not been very much appreciated as a proper method. The method of verification on the other hand will show the following of a particular union over a longer period and would definitely be a better option. The other alternative approach is to say that none of the methods is recognized and therefore the choice of the management will prevail. That certainly cannot be permitted in view of the provisions of the fifth schedule of the Act. The Code of Conduct has a force of acceptance of the organizations of the workers and of the Management and also of the Government, and is being followed in different undertakings. Further, it is also in tune with the provisions of the different statutes in different States.

38. In the circumstances, in our view, the only alternative, as stated above, is to direct the State Government and the Commissioner of Labour to conduct the exercise as per the Code of Discipline, to which the State Government is agreeable. Accordingly, the Petitioner Union may apply to the concerned Labour Commissioner within two weeks from today presenting the claim of its membership figures during the last six months i.e., for the period from 1st march, 2009 to 31st August, 2009. On



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receipt of such an application, the concerned Labour Commissioner will issue notice to the two unions, within two weeks from the date of receipt of the application, calling upon them to submit their membership registers and the necessary supportive documents under the Code of Discipline within two weeks from the date of receipt of the notice by them. The notice will call upon them to produce their records as per the Code of Discipline during the period of six months prior to the date of notice. The Labour Commissioner shall thereafter proceed to decide as to which Union is the representative union of the workmen. We cannot permit the Management to say that the Union which shows the larger membership at the end of the exercise will not be recognized by the Management. Recognition is for the purpose of representing the causes of the workmen in various for including before the Management and various authorities under the Labour Law. It is not a determination available for the sole satisfaction of the Management. It is a factual determination and the determination leads to a status. The Union which establishes a larger membership at the end of the aforesaid exercise, shall be recognized as the representative union.”



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17. In fact, the above principles have been adopted by the learned Single Judge of this Court in W.P.No.3915 of 2022, in its order dated 26.02.2024. Even in the absence of a secret ballot procedure, there is no bar for the State to adopt any other code of discipline suiting to the purpose and complete the exercise of finding out the Union which has got majority strength of members. As there is no consensus between the Management and the Union to adopt a secret ballot, I feel the third respondent under the supervision of the respondents 1 and 2 shall adopt any other method for verification and declare the Union which has got maximum strength of members. On such verification, it is obligatory for the fourth respondent to recognize the said Union.

18. Hence, this Writ Petition is disposed by directing the respondents 1 and 2 to conclude the exercise of verification of the membership of the employees by following the procedure laid down by this Court in MRF United Workers Union Vs. Government of Tamil Nadu and Others, under paragraph No.38 of the said judgment and complete the exercise within a period of six weeks from the date of



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receipt of a copy of this order. No costs. Consequently, connected
miscellaneous petition is closed.

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
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29.10.2024



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To

- 1.The Principal Secretary to Government,
Ministry of Labour and Employment,
Secretariat,
Fort St.George, Chennai 600 009.
- 2.The Commissioner of Labour,
Office of the Labour Commissioner,
DMS Complex,
Teynampet,
Chennai 600 006.
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R.N.MANJULA, J.

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