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W.A.No.1912 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 21.11.2024	Delivered on 21.01.2025
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CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
AND
THE HONOURABLE MR.JUSTICE **C.KUMARAPPAN**

W.A.No. 1912 of 2011
and M.P.No.1 of 2011

Shanmugam
General Secretary,
Labour Progressive Federation,
having office at
No.10/25,Thyegaraya Street,
North Usman Road,
T.Nagar, Chennai-17.

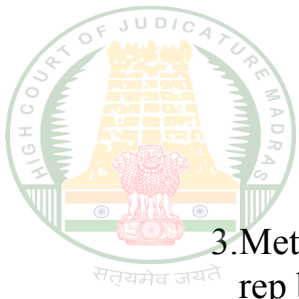
.. Appellant

Vs.

1.The Government of Tamil Nadu
rep by its Principal Secretary,
Transport Department,
Fort St. George,
Chennai-600 009.

2.State Express Transport Corporation Ltd.,
rep by its Managing Director,
near Pallavan Transport House,
Pallavan Salai, Chennai-600 002.

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3. Metropolitan Transport Corporation Ltd.,
rep by its Managing Director,
'Pallavan Illam', Pallavan Salai,
Chennai-600 002.

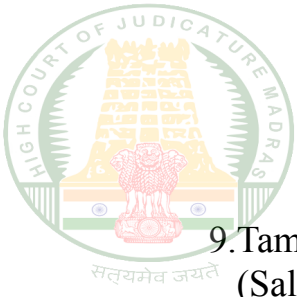
4. Tamil Nadu State Transport Corporation
(Villupuram) Limited
rep by its Managing Director,
Post Box No.56,
3/137, Salamedu
Villupuram-605 602.

5. Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
rep by its Managing Director,
Railway Station Road,
Kumbakonam-612 001.

6. Tamil Nadu State Transport Corporation
(Madurai) Limited,
rep by its Managing Director,
Bye-pass Road, Ellis Nagar,
Madurai-625 010.

7. Tamil Nadu State Transport Corporation
(Tirunelveli) Limited,
rep by its Managing Director,
Trivandrum Road,
Vannarapettai,
Tirunelveli-627 003.

8. Tamil Nadu State Transport Corporation
(Coimbatore) Limited,
rep by its Managing Director,
37, Mettupalayam Road,
Coimbatore-641 043



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9. Tamil Nadu State Transport Corporation
(Salem) Limited,
rep by its Managing Director,
No.12, Ramakrishna Street,
Salem-636 007.

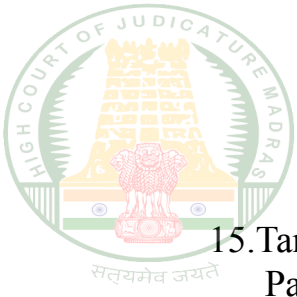
10. Agitator Ambedkar Labour Liberation Front,
Metropolitan Transport Corporation,
'Kalaingarangam'
Pallavan House, Pallavan Salai,
Chennai-600 002.

11. Anna Tholir Sanga Peravai (ATP),
Metropolitan Transport Corporation,
'Kalaingarangam'
Pallavan House, Pallavan Salai,
Chennai-600 002.

12. Indian National Transport Workers Federation,
(INTUC),
Metropolitan Transport Corporation,
'Kalaingarangam'
Pallavan House, Pallavan Salai,
Chennai-600 002.

13. Nethaji Pokkuvarathu Tholilarkal Pathukappu
Tholil Sangam,
Metropolitan Transport Corporation,
'Kalaingarangam'
Pallavan House, Pallavan Salai,
Chennai-600 002.

14. Pattali Thozir Sanga Peravai,
Metropolitan Transport Corporation,
'Kalaingarangam' Pallavan House,
Pallavan Salai, Chennai-600 002.



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15.Tamilaga Pokkuvarathu Tholilargal
Padukappu Sangam,
Metropolitan Transport Corporation,
'Kalaiarangam'
Pallavan House, Pallavan Salai,
Chennai-600 002.

16.Tamil Nadu Government Transport Corporation
Staff Federation (TTSF)
Metropolitan Transport Corporation,
'Kalaiarangam'
Pallavan House, Pallavan Salai,
Chennai-600 002.

17.Tamilnadu Salai Pokkuvarathu Thozhilalar
HMS Peravai
Metropolitan Transport Corporation,
'Kalaiarangam'
Pallavan House, Pallavan Salai,
Chennai-600 002.

18.Tamil Nadu State Transport Corporation
Diploma Technical Employees Federation,
Metropolitan Transport Corporation,
'Kalaiarangam'
Pallavan House, Pallavan Salai,
Chennai-600 002.

19.Tamil Nadu State Transport Corporation
Employees Federation (AITUC)
Metropolitan Transport Corporation,
'Kalaiarangam'
Pallavan House, Pallavan Salai,
Chennai-600 002.



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20. Tamil Nadu State Transport Corporation
Employees Federation (CITU),
Metropolitan Transport Corporation,
'Kalaiarangam'
Pallavan House, Pallavan Salai,
Chennai-600 002.

21. Tamil Nadu State Transport Corporation
Graduate and General Workers Welfare Union,
Metropolitan Transport Corporation,
'Kalaiarangam'
Pallavan House, Pallavan Salai,
Chennai-600 002.

22. Marumalarchi Thozilalour Munnani
Rep. by its Secretary, Thaayagam,
No.12, Rukmani lakshmipathi Salai,
Egmore, Chennai 600 008.

...Respondents

R22 brought on record as impleaded vide
Court Order dated 21.09.2021 made in
CMP 13774 of 2021 in WA 1912/2011 (TRJ & TVTSJ)

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set
aside the order dated 19.09.2011 made in Writ Petition No. 19426 of 2011.

For Appellant : Mr.V.Prakash, Senior Counsel
for M/s.K.Sudalaikannu



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W.A.No.1912 of 2



For Respondent : Mr.Mr.P.Kumaresan,
Additional Advocate General
Asst. by Mr.S.John J.Rajasing,
Additional Government Pleader
for R1

: Mr.Mr.A.Sundaravadanam, for R8

: Mr.Vijay Narayan, Senior Counsel
for Mr.S.Babu, for R11

: M/s..Ramapriya Gopalakrishnan,
for RR 16, 17, and 22

: Mr.Ajay Khose, for R20

J U D G M E N T

*(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)*

The appellant, a Trade Union, is aggrieved by the dismissal of its Writ Petition in WP No.19426 of 2011, wherein it prayed for a negative Mandamus directing the respondents viz. the Tamil Nadu State Transport Corporations of different regions in the State numbering about nine not to



entertain any other Trade Union except the appellant for the duration of its recognition with respect to the grievances of the workers particularly with reference to their service conditions.

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2. The basis of the Writ Petition was that the appellant was recognized as the majority Union and once the appellant has been recognized as the majority Union, it will alone be entitled to represent the workers of the employers/Transport Corporations and the Management shall not be allowed to dilute the functions of a Trade Union by entering upon negotiations with Trade Unions which do not enjoy the majority support of the workmen.

3. The appellant also relied upon certain judgments of the Hon'ble Supreme Court which dealt with the concept of collective bargaining and the right of representation of the workmen in dealing with the Management particularly with reference to their service conditions and salaries. It was claimed that the Management entertains the Trade Union sponsored by the ruling political dispensation and therefore, the Trade Union movement as

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such which was evolved to protect the interest of the workmen is being diluted.

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4. After the Writ Petition was entertained, the appellant filed an application for impleading the other Trade Unions in which the workmen of the Transport Corporations were members. Nearly 12 Trade Unions were impleaded. The Writ Court after hearing the counsel for all the parties including the appellant and after analyzing the law relating to principle of collective bargaining and various precedents of the Courts in India as well as Abroad concluded that a Trade Union cannot seek a restraint on the Management as to who should it negotiate with. On the said conclusion, the Writ Court dismissed the Writ Petition.

5. The Writ Court took pains to refer to the practices and also referred to the proceedings of the International Labour Organisation and the relevant Government Orders that were issued from time to time. Reference was also made by the Writ Court to the judgments in *Balmer Lawrie Workers' Union, Bombay and another v. Balmer Lawrie & Co. Ltd. and others*,
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reported in *1984 (Supp) SCC 663*, and the judgment in *Food Corporation of India Staff Union vs. Food Corporation of India and others*, reported in *1995 Supp (1) SCC 678*. It is this dismissal that is subject matter of challenge in this Appeal.

6. We have heard Mr.V.Prakash, learned Senior Counsel appearing for the Mr.K.Sudalaikannu, for the appellant, Mr.P.Kumaresan, learned Additional Advocate General assisted by Mr.S.John J.Rajasing, learned Additional Government Pleader appearing for the first respondent, Mr.A.Sundaravadanam, learned counsel appearing for the eighth respondent, Mr.Vijay Narayan, learned Senior Counsel appearing for Mr.S.Babu, for the eleventh respondent, M/s.Ramapriya Gopalakrishnan, learned counsel appearing for the respondents 16, 17, and 22 and Mr.Ajay Khose, learned counsel appearing for the 20th respondent.

7. While Mr.V.Prakash, learned Senior Counsel appearing for the appellant would vehemently contend that the very principle of collective bargaining would lose its sheen, if the Management is allowed to call the

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Trade Union of its liking for negotiations irrespective of the strength of the workers, who are the members of the Unions. According to him, once a Trade Union is recognized as the majority Trade Union till the period of recognition is complete no other Trade Union should be called for negotiations. He would also rely upon the judgment in ***Balmer Lawrie Workers' Union, Bombay and another v. Balmer Lawrie & Co. Ltd. and others***, cited supra, in support of his contentions.

8. Contending contra Mr.Vijay Narayan, learned Senior Counsel appearing for the eleventh respondent another major Trade Union in the State would contend that merely because a Union is recognized at some point of time, it does not acquire an exclusive right to represent the workmen. The very principle of collective bargaining is to enable the workmen to nominate somebody to represent their grievances and such representative must always be a person, who has the confidence of the majority of the workmen. Merely because a particular Trade Union is recognized by the Management, it does not follow that the Management must only engage in negotiations with the recognized Trade Union and not



others irrespective of the number of workers, who are members of the Trade Union or Unions concerned.

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9. Mr.Vijay Narayan, learned Senior Counsel would also point out that most of the Trade Unions are affiliated to political parties and their support base also varies with the fortunes of the political party in the general elections to the State Assembly. That being the peculiar situation in this State, going by the recognized Trade Union being the only negotiator of the rights of the employees would at times result in negotiating with a Union which represents only the minority of the work force. The learned Senior Counsel would also point out there are as many as 367 registered Trade Unions in the eight Divisions of the Transport Corporation all over the State.

10. In each region one or other Trade Union has got the majority support of the employees. Therefore, when it comes to a negotiation on behalf of all the employees all over the State, no particular Trade Union be it recognized or an unrecognized may not at all times enjoy the support of

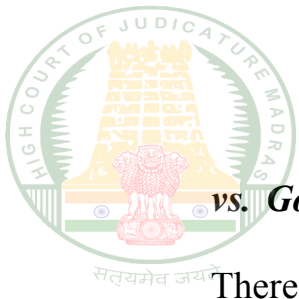
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the majority of the workmen. Therefore, according to the learned Senior Counsel, the methodology suggested by the Hon'ble Supreme Court in ***Food Corporation of India Staff Union vs. Food Corporation of India and others'*** case, wherein the Hon'ble Supreme Court directed ascertainment of relative strength of all the eligible Unions by Secret Ballot and giving representation to the Union which gets the majority votes can be followed by the State Corporations also.

11. Mr.P. Kumaresan, learned Additional Advocate General appearing for the State/first respondent would submit that a Division Bench of this Court in ***Chief Executive, Railway Employees Co-operative, Credit Society Ltd. and Ors. Vs. Commissioner of Labour cum Registrar of Trade Unions and Ors.***, reported in (2017) IV LLJ 388 Mad, had held that Secret Ballot cannot be a proper system for the purposes of identifying a majority Union. The Division Bench has taken such view after referring to the judgments of the Hon'ble Supreme court in ***Food Corporation of India Staff Union vs. Food Corporation of India and others***, as well as the judgment of a Division Bench of this Court in ***MRF United Workers Union***



vs. *Government of Tamil Nadu and Ors.*, reported in **(2009) 4 LLN 967**.

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Therefore, according to the learned Additional Advocate General, conduct of an election by secret ballot to ascertain as to whether a Union enjoys the support of the majority workers or not can be resorted to only under exceptional circumstances and the check off system which is provided under the regulations should be normally followed.

12. Mr.Ajay Khose, learned counsel appearing for the twentieth respondent one of the Trade Unions would submit that while the Check off system is not a foolproof method of ascertaining the majority Trade Union as it allows the Management to dictate terms, Secret Ballot would be the best method to ascertain as to which Union enjoys the majority support. He would also sound a word of caution that even Secret Ballot may not be a very safe method considering the fact that the fortunes of the Trade Union swing like a pendulum depending on the fortunes of the political party to which the Trade Union is affiliated.

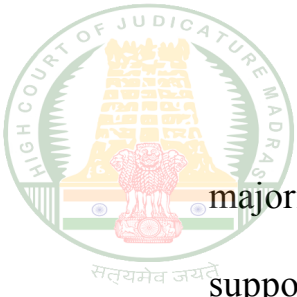
13. Drawing our attention to the very judgment of the learned Single



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Judge which is under Appeal, the learned counsel would submit that the appellant Trade Union which was recognized as a Union representing the majority of the workmen of the State Transport Corporations was found to have lost its membership and the eleventh respondent Trade Union which at the relevant point of time was affiliated to the political party that was the ruling dispensation had acquired more memberships. Therefore, according to Mr.Ajay Khose, neither the Check off System nor the Secret Ballot would, in the peculiar circumstances prevailing in this State, be a safe method to decide as to which of the Trade Union has the support of the majority.

14. Similar concerns were also voiced by the other learned counsel appearing for the other Unions which are not affiliated to any political party. The learned counsel appearing for the parties were unanimous in conceding that the fortunes of the Unions are dependent on the fortunes of the political party to which they are affiliated and every political party or its splinter group in the State has a Trade Union as a byproduct. It is therefore, very clear that a Trade Union which is recognized as a Union representing the



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majority of the work force in an establishment may not continue to enjoy the support of the majority for the entire period of its recognition. If there is a change of guard in Fort St. George the seat of power in the State, there will be a change in the fortunes of the Unions also.

15. We need to approach the issue with this factual background in mind. Several decisions of this Court as well as the Hon'ble Supreme Court have gone into this question. Earliest judgment was in ***Balmer Lawrie Workers' Union, Bombay and another v. Balmer Lawrie & Co. Ltd. and others***, wherein the Hon'ble Supreme Court had after referring to Section 20 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 which confers certain rights on a recognized Trade Union and the report of the National Commission on Labour chaired by Hon'ble Mr. Justice P.B. Gajendragadkar, Former Chief Justice of India, concluded that the majority Union will have the sole bargaining right and the question of deciding the majority by conduct of an election may not be safe.



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16. However, subsequently the Hon'ble Supreme Court in ***Food Corporation of India Staff Union vs. Food Corporation of India and others***, evolved the Secret Ballot System for deciding as to which of the Trade Union will have the right to represent the workers. Though in ***General Secretary, N.L.C. Labour and Staff Union (CITU) and others vs. NLC United Workers Union and others***, made in WA Nos.502 and 503 of 2005 dated 11.12.2007, a Division Bench of this Court had directed conduct of an election and if none of the Unions cross the 51% margin, the Management was directed to invite the Unions that got the most number of votes till it reached the cut of figure of 51% and invite all the Unions which had a total vote share of more than 51% for negotiations. This was done on the peculiar facts of that case where none of the Unions had more than 51% of the votes polled.

17. In ***MRF United Workers Union vs. Government of Tamil Nadu and Ors.***, another Division Bench of this Court had after concluding that the desirability to have a truly independent and representative Union of the



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workmen to represent their cause cannot be lost sight of, had after referring to the ILO principles of right to collective bargaining concluded that the best option would be to direct the State Government and the Commissioner of Labour to conduct the exercise as per the Code of discipline to check the claim of membership of the Unions in the last six months prior to the date of the judgment and decide which Union has the support of most of the workmen.

18. We must hasten to point out that this method also has an inherent problem, inasmuch as it will lead to shifting of loyalties of the employees in favour of one of the Unions. Yet another method was adopted by another Division Bench of this Court in *State of Tamil Nadu rep. by its Secretary, vs. Tamil Nadu Trade Union Congress, rep. by its General Secretary*, made in WA Nos.1234 of 1998 etc. batch, wherein the Division Bench directed conduct of a secret ballot and any Union having more than 10% of the total votes polled will be able to send a representative for every 10% of the votes polled in its favour. That was done, since there were about 18 Trade Unions which claimed to represent the employees. The Writ Court has concluded



that it will be open to the Management to invite any number of Unions which according to it represents the workers and no Union be it a recognised or a unrecognised can prevent the Management from calling any number of Unions.

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19. Though Section 14 of the Proposed Industrial Relations Code, provides a mechanism to provide a reasonable representation to all Trade Unions unfortunately the same has not been brought into force till date. Therefore, we have to go by the judge made law. A reading of the various pronouncements of this Court and the Hon'ble Supreme Court, referred to supra, demonstrates that the views of the Court are not uniform and the earliest decision in ***Balmer Lawrie Workers' Union, Bombay and another v. Balmer Lawrie & Co. Ltd. and others***, has been consistently diluted in the various other subsequent decisions.

20. The majoritarian theory though would be the easiest possible solution it is also not free from possible flaws. A Union, which has a wafer thin majority of 51% of the workmen or just about 50% of the workmen,

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may end up sacrificing the rights of the remaining 49% or 49.5% of the workers. If we are to apply the methodology suggested by a Division Bench of this Court in NLC, there will be yet another problem where two or three minority Unions could be able to project that they have above 51% of the vote share, whereby ditching the Union which has the support of more number of employees. Providing the representation to all the Unions which have more than 10% of vote share as suggested by the Division Bench in *State of Tamil Nadu rep. by its Secretary, vs. Tamil Nadu Trade Union Congress, rep. by its General Secretary*, (WA Nos.1234 of 1998 etc. batch), also may lead to too many representatives which would make the process of negotiation unworkable.

21. Section 14 of the proposed Industrial Relations Code, contemplates and negotiating council consisting of representatives of all Trade Unions which have the support of not less than 20% of the total workers on the muster roll of the Industrial establishment and providing for one representative for each 21%. This appears to be a well thought out procedure and would take into its fold representatives of the real majority of

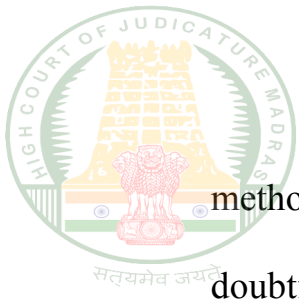


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the workers. Of course Sub section (3) of Section 14 provides that a Trade Union having 51% or more of the workers on the muster roll of the Industrial Establishment should be recognized as the sole negotiating Union of the workers. If one Trade Union has the support of more than 50% of the workers then there can be no difficulty and that Trade Union will be the sole representative. Difficulty arises only when none of the Unions are able to gather the support of 51% of the work force.

22. We are also informed that there are 367 registered Unions in eight divisions of the Transport Corporation in this State. This numbers would definitely lead to a situation where none of the Trade Unions would have the support of more than 51% of the work force. There is also this political uncertainty which we have pointed out earlier. Such political uncertainty should also be taken into account. No doubt secret ballot has been termed as a temporary phenomenon and verification by check off has been suggested as an alternative.

23. Verification by check off has also proved to be not a foolproof



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method as the Management gets an opportunity to make verification itself doubtful. Therefore, we will have to adopt a method by which the majority of the workers are actually represented during negotiations with the Management. The Industrial Relations Code has not been put in vogue. Therefore, we cannot fall back on Section 14 of the said Code. Unlike Maharashtra and Madhya Pradesh, the State Legislature has not thought it fit to bring in a legislative solution for this problem.

24. As rightly pointed out by the learned Single Judge, the National Labour Congress headed by Hon'ble Mr. Justice P.B.Gajendragadkar, Former Chief Justice of India, had in fact suggested that there should be certain guidelines to make recognition of a Trade Union compulsory under a Central Law. The Report of the National Labour Commission while dealing with the principle of collective bargaining had at paragraph 23.50 stated thus:

"23.50. We have thus, over the last ten years, the experience of securing recognition for a union both on a statutory and on a voluntary basis. It shows that the



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former has distinct advantages. On this point there is fair measure of support in the evidence before us. It would be desirable to make union recognition compulsory under a Central law, in all undertakings employing 100 or more workers, or where the capital invested is above a stipulated size. A trade union seeking recognition as a bargaining agent from an individual employer should have a membership of at least 30 per cent of the workers in the establishment. If it is for an industry in a local area, the minimum membership should be 25 per cent. Where more unions than one contend for recognition, the union having a larger following should be recognised."

25. The Hon'ble Single Judge has pointed out that despite the recommendation having been made in 1969 neither the Central Government nor the State Government has enacted a law relating to recognition of Trade Unions till date. In the absence of law, we have to necessarily go by the

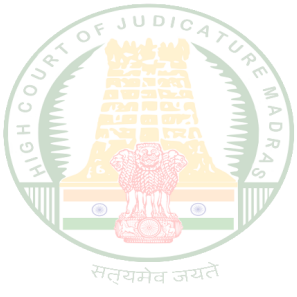


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judicial precedents. We have already pointed out the diverging judicial opinion on the issue. The easiest solution would be to go by the majority. If any one Trade Union on its own has the support of 51% of the workers or more, it will be the sole bargaining agent of the workers. If no Trade Union is able to garner the support of more than 50% of the workers then the difficulty arises. If we are to allow Union with most number of workers on its rolls to be the sole bargaining agent, there may be cases where a Union with 30% of the vote share would end up bargaining for the remaining 70% also.

26. On analysis of all the judgments, we find that a new problem stems from each and every solution that has been suggested. We find that the following proposals will by and large avoid exclusion of any set of workers from the negotiating table which is the ultimate object to ensure collective bargaining.

1. If any one Trade Union is able to show that it has the support of more than 50% of the workers then it will be that Union which will be the sole representative of the



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work force.

2. If no Union has more than 50% support then all the Unions which have the support of more than 20% of the work force will form a negotiating council.

3. A Union having support of 20% of the work force will have the right to nominate one representative for every 20% of votes it has.

For example a Union having 40% of the work force on its rolls as members will be able to send two representatives. Union which has got 20% will have the right to send one representative, the fractions of 20% will not be taken into account.

27. The next question that will prop up for consideration is how to ascertain the strength of the Union. The Check off system has been held to have lost reliability, as it enables the Management to control the membership in the Union. Therefore, the only way out will be an election, by Secret Ballot or otherwise, among the employees. This method will also take care of the fluctuating political fortunes. Before any general wage

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revision or any major settlement relating to the service conditions between the workmen and the management, this exercise of an election to ascertain the respective strength of each trade union should be undertaken and on the basis of the result of the exercise and on the ascertainment of the strength of the respective Trade Union, the directions contained above shall be followed.

28. We therefore conclude that no Union except a Trade Union which has got the support of more than 50% of the work force be it recognised or otherwise will have a right to prevent other Unions from participating in the negotiations with the Management. In order to provide a wide base for representation any Union which has the support of more than 20% of the work force will form part of the negotiating council. We therefore **dispose** of the Writ Appeal on the above terms. The parties will bear their own costs. Consequently, the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) (C.KUMARAPPAN, J.)
21.01.2025

jv
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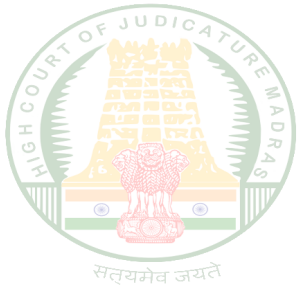
Index : Yes

Neutral Citation : Yes

Speaking Order

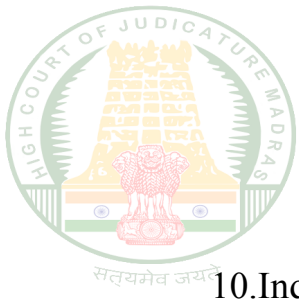
To

- 1.The Principal Secretary,
The Government of Tamil Nadu
Transport Department,
Fort St. George,
Chennai-600 009.
- 2.The Managing Director,
State Express Transport Corporation Ltd.,
near Pallavan Transport House,
Pallavan Salai, Chennai-600 002.
- 3.The Managing Director,
Metropolitan Transport Corporation Ltd.,
'Pallavan Illam', Pallavan Salai,
Chennai-600 002.
- 4.The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Limited
Post Box No.56,
3/137,Salamedu
Villupuram-605 602.



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- 5.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Railway Station Road,
Kumbakonam-612 001.
- 6.The Managing Director,
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Trivandrum Road,
Vannarapettai,
Tirunelveli-627 003.
- 8.The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore) Limited,
37,Mettupalayam Road, Coimbatore-641 043
- 9.The Managing Director,
Tamil Nadu State Transport Corporation
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No.12,Ramakrishna Street,
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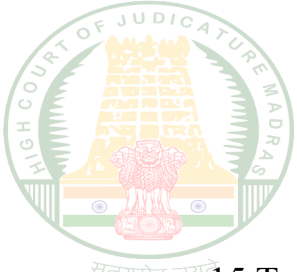
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R.SUBRAMANIAN, J.
and
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