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W.A.No.3077 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2025

CORAM :

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE HEMANT CHANDANGOUDAR

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1. All India Defence Employees Federation (AIDEF)
Rep. by its President S.N.Pathak &
General Secretary C.Srikumar, SM Banerjee Maligai
OCF Road, Avadi, Chennai – 600 054.

2. J. Wilson Chirstopher .. Appellants

Vs.

1. Government of India
Ministry of Defence, Department of Defence Production
Rep. by its Secretary
South Block, New Delhi – 110 001.

2. Ordnance Factory Board
Rep. by its Secretary
Ayudh Bhavan, 10-A, S.K.Bose Road
Kolkatta – 700 001.

Now named as Directorate of Ordnance (C&S)
Audh Bhavan, 10-A, S.K.Bose Road
Kolkatta – 700 001.

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letter Patent, against
the order dated 29.07.2024 in W.P.No.19674 of 2021.

For the Appellant : Mr.Ravi Kumar Paul
Senior Counsel
for M/s.Paul and Paul



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JUDGMENT

(Judgment of the Court was made by R.SURESH KUMAR, J.)

This intra-Court appeal has been directed against the order passed by the Writ Court dated 29.07.2024 made in W.P.No.19674 of 2021.

2. The appellant was the writ petitioner, who, along with individual employee, joined together and filed the said writ petition to challenge the Office Memorandum bearing No.1(5)/2021/OF/DP/(Plg-V)¹ dated 21.06.2021 issued by the first respondent, that is the Government of India, Ministry of Defence.

3. To have an immediate reference, the OM dated 21.06.2021 is extracted hereunder in entirety:-

No.1(6)/2021/OF/DP(Pig-V)
Government of India
Ministry of Defence
Department of Defence Production

New Delhi, 21st June, 2021

Office Memorandum

Subject: Cabinet approval to convert the production units of Ordnance Factory Board into 07 Defence Public Sector Undertakings (DPSUs) with 41 units.

The Cabinet Committee on Security (CCS) in

¹ In short, hereinafter referred to as "OM".



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its meeting held on 29.07.2020 had approved to convert Ordnance Factory Board (OFB), a subordinate Office of Ministry of Defence into one or more than one 100% Government owned corporate entities, registered under the Companies Act, 2013.

2. It is informed that the Cabinet in its meeting held on 16.06.2021 has now inter-alia approved to convert the production units of OFB into 07 DPSUs with 41 units, as mentioned as Annexure-I.

3. Separate Oms on the related matters would be issued Subsequently.

*S/d. 21.06.2021
(Sandeep Jain)
Director (P&C)*

Tel. No. 001-23011420.

4. This OM was issued by the Ministry of Defence, Government of India, to convey the decision of the Union Cabinet held on 16.06.2021, approving the conversion of the production units of OFB, that is Ordnance Factory Board, into seven DPSUs, that is Defense Public Sector Units with 41 Units as mentioned in the Annexure-I attached therein.

5. It is, only in this context, to be noted that, the very same decision of the Central Government has already been questioned before the Delhi High Court in W.P.(C)No.8056 of 2022 and C.M.Nos.24455 & 24456 of 2022 & 13262 of 2023, where, the first Division Bench of the Delhi High Court, vide its order dated



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03.08.2023, dismissed the said writ petition. Only in the teeth of the said decision having been made by the Delhi High Court on 03.08.2023 in the matter of ***Bharatiya Pratiraksha Mazdoor Sangh vs. Union of India, Ministry of Defence, Rep. by its Secretary & Anr.***, the learned Writ Court has considered the present writ petition and dismissed the same through the impugned order dated 29.07.2024.

6. As the reason that has been cited in the Delhi High Court's judgment has sustained the order impugned dated 21.06.2021 before the Writ Court, the same has not been once again canvassed here by *Mr.Ravi Kumar Paul*, the learned Senior Counsel appearing for the appellants. He, in fact, fairly contends that, this appeal has been filed on the only ground that under the provisions of Section 33 of the Industrial Disputes Act, 1947², if there has been any conciliation pending between the employees and the employer and the same has not been concluded in oneway or the other, within the meaning of Section 22(b) of the said ID Act, no decision could be taken conclusively by the employer, prejudicial to the interest of the employees. This legal position has not been considered by the Delhi High Court, therefore, at least, for this particular point, the Delhi

² For brevity, hereinafter referred as "ID Act".



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High Court's judgment may not be taken as a precedent to be followed in the present *lis*, he contended.

7. The learned Senior Counsel would also contend that, insofar as the decision of the Writ Court which is impugned herein is concerned, though this issue was raised before the Writ Court and it was considered by the Writ Court, the reasons cited by the Writ Court in paragraph 14 of the impugned order may not be correct or justifiable in view of the factual matrix and therefore, such approach of the Writ Court, as reflected in the order impugned, also might be an erroneous one, therefore, the learned Senior Counsel seeks indulgence of this Court.

8. In support of his contentions, he would rely upon the first Minutes of the Conciliation Officer, where, he pointed out that the agreement reached by the parties to a limited extent, in fact, has been recorded, by which, it was agreed by both parties that in respect of the strike demand dated 04.08.2020, during the pendency of the on-going Conciliation Proceedings, the employees would abide by the provisions of Section 33(1) of the ID Act and the Unions will not proceed on the proposed strike from 12.10.2020.



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9. Relying upon this recording of the Minutes dated 09.10.2020, the learned Senior Counsel would contend that, having agreed upon the provisions of Section 33(1) of the ID Act, without even having a conclusion of the Conciliation Proceedings, which had been admittedly made only on 18.06.2021, since a decision has been taken by the Union Cabinet on 16.06.2021, strictly speaking for all practical purposes, especially in the context of Section 33(1) as well as Section 22(b) of the ID Act, it was to be considered only as a pending Conciliation Proceedings. Therefore, the decision taken by the Union Cabinet, as reflected in the impugned communication dated 21.06.2021, is directly in violation of the said provisions of the ID Act and therefore, the learned Senior Counsel would contend and canvass the point that the impugned order before the Writ Court dated 21.06.2021 is bad in law and since the said issue has not been considered in proper perspective by the Writ Court through the impugned order, it requires indulgence at the hands of the Division Bench in the present or instant writ appeal, he contended.

10. He has, in fact, relied upon a decision of the Hon'ble Supreme Court of India in the matter of **Lokmat Newspapers Pvt.**



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Ltd. vs. Shankarprasad³, where, he relied upon paragraph 27 of the judgment, which reads thus:

"27. A mere look at the aforesaid provisions shows that in cases of public utility services referred to in Section 22(2) of the ID Act, the conciliation proceedings shall be deemed to have commenced on the date on which a notice of strike or lockout under Section 22 is received by the Conciliation Officer. That deals with commencement of mandatory conciliation proceedings as laid down by Section 12(I) read with Section 20(1). But when we come to Section 20(2), it becomes obvious that the legislature has introduced by way of legal fiction an irrebuttable presumption as per sub-clause (b) of Section 20(2) that when during conciliation proceedings no settlement is arrived at between the parties, the conciliation proceedings shall be deemed to have concluded when the failure report of the Conciliation Officer is received by the appropriate Government. Consequently, the legislative intention becomes clear that conciliation proceedings initiated under Section 12(1) whether of a discretionary nature or of a mandatory nature shall be treated to have continued and only to have concluded when the failure report reaches the appropriate Government. As noted earlier, it is not in dispute between the parties that after the closure of investigation on 22-6-1982 when the conciliator sent the failure report, it reached the State Government only on 13-8-1982. Therefore, it has to be held that the conciliation proceedings in the present case had not got terminated and got concluded only on 13-8-1982 as per the aforesaid statutory presumption created by the legal fiction provided in Section 20(2)(b). Therefore, as a necessary corollary, it must be held that these conciliation proceedings were pending till 13-8-1982. It is axiomatic that conciliation proceedings which are deemed not to

3 (1999) 6 SCC 275



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have concluded must be deemed to have continued or remained pending. That which is not concluded is pending, equally that which is pending cannot be said to be concluded."

11. We have considered the said submissions made by the learned Senior Counsel appearing for the appellants and have perused the materials placed before this Court.

12. Insofar as the decision that has been taken by the Central Government, it emanates from the decision that it has already been taken by the Cabinet Committee on Security in its Meeting held on 29.07.2020, where, it had approved to convert the OFB, a subordinate Office of the Ministry of Defence, into one or more than one 100% Government owned corporate entities registered under the Companies Act, 2013. Therefore, a decision has already been taken in that direction by the Cabinet Committee on Security as early as on 29.07.2020 itself.

13. Once such a decision has been taken, further following up action has to be made by taking appropriate decision at the Cabinet of the Union Government and when such a decision was about to be taken, it seems that there has been a strike in this issue by the Employees' Union, including the present appellant Federation and



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that is the reason why, the matter has been referred to the Conciliation Officer under Section 33 of the ID Act.

14. No doubt, the parties have agreed upon to abide by the provisions of Section 33(1) of the ID Act, as recorded in the Minutes of the Conciliation Officer vide the proceedings dated 12.10.2020. Thereafter, several rounds of conciliation has taken place, however, it has not yielded any fruitful results. Ultimately, the next conciliation Meeting was held on 22.04.2021, but, at the request of the Employees' Union/Federation, it was postponed and the next conciliation Meeting was fixed on 11.06.2021. On that date also, the proceedings remained inconclusive and therefore, the next Meeting was held on 15.06.2021, whereas, on 15.06.2021, except *NPDEF*'s representatives who attended the conciliation, none of the other Federations, that is *AIDEF*, *INDWF* and *BPMS* appeared before the Conciliation Officer, that is, including the present appellant.

15. This, in fact, has been recorded in the report of failure of conciliation dated 18.06.2021 by the Conciliation Officer, where, in the concluding paragraph, he has recorded that, since both the parties, during the Conciliation Meeting, were adamant and stuck to their view points, no amicable settlement could be arrived at,



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therefore, the Conciliation Officer was left with no other alternative, but to declare the Conciliation Proceedings "failed".

16. Even though this declaration for the purpose of Section 33 of the ID Act was made or communicated on 18.06.2021, such a decision became inevitable, as majority of the Employees' Union have not attended the Meeting even on 15.06.2021, therefore, the decision taken on 15.06.2021 has been communicated to the Conciliation Officer vide the proceedings dated 18.06.2021. This, in fact, has been pointed out by the learned Writ Court in paragraph 14 of the impugned order.

17. In this context, the learned Senior Counsel vehemently contended that, insofar as the report of failure of Conciliation is concerned, it shall be taken as a failure report only when the same is received by the appropriate Government in view of the clear language used in Section 22(b) of the ID Act. In support of the said contention, the above cited decision in **Lokmat Newspapers** case was relied by him.



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18. There is no quarrel on the proposition that, once a decision of failure of Conciliation is reported and received by the appropriate Government, only then, they could proceed with further action. In other words, till such a decision is received by the appropriate Government, it can only be construed that the Conciliation Proceedings was pending. Only in this context, it is further vehemently contended on the part of the learned Senior Counsel appearing for the appellant that, the decision of the Union Cabinet was taken admittedly on 16.06.2021, whereas, the report of failure of Conciliation is dated 18.06.2021. Since two days prior to such failure report, a decision has been taken, in all practical purposes, strictly construing the provisions of the ID Act referred to above, the decision of the Cabinet dated 16.06.2021 could only be construed as a decision taken during the pendency of the Conciliation Proceedings, was the contention of the learned Senior Counsel appearing for the appellant.

19. But, the fact remains that, on 29.07.2020, the Cabinet Committee on Security has taken a policy decision to convert the OFB, a subordinate Office of the Ministry of Defense, into one or more than one 100% Government owned Corporate entities



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registered under the Companies Act, 2013. Therefore, the first decision, which had emanated from the Cabinet Sub-Committee as early as on 29.07.2020. The subsequent decision in this regard for execution of such a major policy decision taken by the Union Government for conversion of OFB and the Ordnance Factories coming under the administration of OFB, as Defense Public Sector Units, was to be taken by the Cabinet and that was taken on 16.06.2021.

20. Even prior to the decision taken on 16.06.2021, it has become clear that the Employees' Association or Federation, that is three out of four have expressed their inability to participate in the Conciliation Proceedings on 15.06.2021 itself, therefore, there was no meaning in keeping the Conciliation Proceedings pending at the hands of the Conciliation Officer and that is the reason why he has passed orders on 18.06.2021.

21. Though technically speaking, such an order passed by the Conciliation Officer on 18.06.2021 should reach the appropriate Government, only then it could be construed that the decision on the failure report has reached the Government and could also be construed that the Conciliation Proceedings is not pending, but



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when such major policy decisions are taken by the Government, that too, with regard to the Defense Unit or Defense Production Units, it is not a mere administrative decision of an employer, but it is a decision taken by the Union Government by way of major policy decision pertaining to the security of the Country.

22. Visualizing a situation that, if a war is declared, where, the arms and ammunitions, apart from those that have already been produced and have been stocked at the Ordnance Factories in the Country, are getting exhausted, more production would be needed during such period of emergency due to the war or conflict. On such occasions, normal activities would be suspended and everybody's focus would be on the defense side, as the Country's security should not be at stake at any costs. In such circumstances or situation, for instance, if any set of employees or Personnel belonging to these Defense factories go for strike or production is not resulted in the expected lines to meet out the contingency due to the war situation for our Defense Personnel, then, any emergency decision has to be necessarily taken.

23. Here, in the case in hand, it is not a war time, it is only an ordinary period, nevertheless, insofar these Defense Production



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Units are concerned, since they are manufacturing and producing arms and ammunitions mainly for our Defense Forces and also a considerable extent for export also, the smooth running of these Defence Units, that is Defence Production Units, is to be ensured.

24. In order to ensure such smooth functioning with more production capacity, if any policy decision is taken by the Union Government, after prolonged deliberations, even years back in the year 2020 itself, any follow up decision taken by the Union Government through its Cabinet could only be construed as an extraordinary policy decision taken mainly having the security of this Country in mind of such policymakers. When such decisions are taken, in order to stall those decisions, these kinds of hyper-technical objections normally cannot be accepted.

25. In this context, if we look at the decision of the Delhi High Court, where, the very same impugned order before the Writ Court herein was put under challenge, the Division Bench of the Delhi High Court, in its elaborate decision, *inter alia*, has concluded in the following terms:-

"36. In the considered opinion of this Court, in light of the aforesaid law laid down by the Apex Court in catena of judgments, it can be safely



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gathered that policy making power continues to be in the sole domain of the executive. The policy framed by Government of India is in national interest keeping in view the defence requirements, and therefore, the question of interference by this Court does not arise. The policy decision in the present case, by no stretch of imagination, is violative of Article 21 nor any other constitutional provision.

37. In the present case, corporatization of the OFB, in no way, is violating or infringing the constitutional rights guaranteed to the citizens and the policy decision has been taken in larger public interest and in the interest of the nation to strengthen the defence production in the country ensuring quality products and a regular supply of arms and ammunitions to the Armed Forces.

38. This Court does not find any reason to interfere with the policy decision of the Government of India especially in light of the fact that the interest of the employees has already been protected. Therefore, no case for interference is made out in the present case. The petition is, accordingly, dismissed."

26. We are in respectful agreement with the said view taken by the Division Bench of the Delhi High Court in the aforesaid case of ***Bharatiya Pratiraksha Mazdoor Sangh***. Therefore, the one and only objection raised by the learned Senior Counsel appearing for the appellant to have a successful challenge against the OM dated 21.06.2021, made by the Ministry of Defence, Government of India, Department of Defence Production, in our considered view, would noway stand before the said policy decision taken by the



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Government for the aforesaid special reasons and circumstances in the context of the Country's security.

27. In that view of the matter, we are not inclined to entertain this writ appeal. The order passed by the Writ Court, not only for the reasons cited by the learned Judge in the impugned order, but also for the added reasons as we have discussed herein above, is to be sustained, therefore, the impugned order is sustained.

28. Resultantly, the writ appeal fails and hence, it is liable to be dismissed and accordingly, it is dismissed. However, there shall be no order as to costs.

(R.S.K., J.) (H.C., J.)
17.10.2025

Neutral Citation:Yes
Speaking Order
Internet:Yes
Index:Yes

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To:

1. The Secretary
Government of India
Ministry of Defence, Department of Defence Production
South Block, New Delhi – 110 001.
2. The Secretary
Ordnance Factory Board
Ayudh Bhavan, 10-A, S.K.Bose Road
Kolkatta – 700 001.



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R. SURESH KUMAR, J.
AND
HEMANT CHANDANGOUDAR, J.
(drm)

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