



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Reserved on: 13.11.2025
Judgment pronounced on: 28.11.2025

+ W.P.(C) 1199/2015 & CM APPL. 2096/2015

M/S AGGARWAL HOTELS PVT. LTD.Petitioner
Through: Mr.Anil K.Hajelay, Advocate

versus

ASSISTANT LABOUR COMMISSIONER & ANR.....Respondents

Through: Mr. Vinay Singh and Ms. Sangita
Singh, Advocates for R-2.

+ W.P.(C) 2874/2018 & CM APPL. 11598/2018

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Singh, Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. The present writ petitions under Article 226 of the
Constitution of India have been filed by the petitioner assailing



Annexure P-1 in both the petitions, i.e., Orders dated 07.04.2014 in F.25(1)/ALC/PW/DLC/NDD/2014/934 passed by the Assistant Labour Commissioner (New Delhi), Labour Department, Govt. of NCT Delhi and 21.02.2014 in F/I/PW/ALC/NDD/2017/466 passed by Deputy Labour Commissioner, District New Delhi, Women and Child Development Department Building, New Delhi, whereby respondent no.1 while dealing with an application dated 14.02.2014 pertaining to the recognition of protected workmen declared seven office bearers of respondent no. 2 as 'Protected Workman'.

2. The short factual background of the case is as follows:
The petitioner is a private limited Company incorporated under the Companies Act, 1956, having its office at P-16, Connaught Circus, New Delhi. The petitioner is involved in hospitality business and has two hotels, namely, M/s Hotel Alka and M/s



2025:DHC:10555



Hotel Alka Annexe in New Delhi, and a restaurant, namely, M/s M/S Tavern on the Greens at Lado Sarai, New Delhi. The petitioner has approximately 80 employees. Respondent no. 2, claiming to be a registered trade Union, submitted an application dated 21.01.2014, i.e., Annexure P-3, before the petitioner on 24.01.2014, seeking a declaration of seven of its office bearers as 'protected workmen'.

2.1. The petitioner sent Annexure P-4 reply dated 03.02.2014 to respondent No.2, *inter alia*, stating that the total strength of the petitioner was around 80 only. The maximum number of workmen who could be granted protection could not exceed five. The respondent no. 2 was also informed that five of the persons mentioned that their application were under suspension for acts of misconduct and that disciplinary proceedings were pending and in progress. It was pointed out that immunity could not be granted under the guise of the status



of protected workmen. Annexure P-5 (Colly) contains copies of the suspension letters and charge sheets issued to the said five workmen.

2.2. The petitioner also stated in the reply that different set of persons were claiming to be office bearers of the second respondent/Union having the same registration number, i.e., 1150, thus creating doubts as to which Union was the genuine one. The petitioner, requested documents for verification, including proof of proper elections through which the persons named in the application were elected as office bearers. However, respondent no. 2 failed to provide any of the documents sought and thereafter, filed Annexure P-6, an application dated 12.02.2014, before respondent No. 1 seeking a declaration that the same seven office bearers be declared protected workmen.



2.3. The petitioner further alleged that respondent no. 2/Union had no locus standi to represent the workmen of the petitioner. According to the petitioner, Mr. Sita Ram Mishra was not the President of the Hotel Mazdoor Union bearing registration number 1150, since the same registration number was also being used by one Gopi and one Maya Ram, who claimed to be the President and Secretary, respectively, of the Hotel Mazdoor Union operating from a different address.

2.4. Respondent No.1, on the basis of the said application, issued Annexure P-7, show cause notice dated 14.02.2014 to the petitioner. Pursuant to the notice being received, the petitioner filed reply dated 10.03.2014 reiterating the stand taken earlier in their reply to the second respondent.

2.5. Respondent no. 2 filed a counter, denying the allegations of the petitioner and contending that respondent no. 2/Union was functioning within the establishment of the



petitioner and that one Sita Ram Mishra and Ranjan Kumar were the President and Joint Secretary respectively of the Union. It was also contended that the Union had passed a resolution dated 02.01.2014 declaring the seven workmen mentioned in the application as protected workmen. They further contended that even workmen under suspension and facing disciplinary action were entitled to be declared as protected workmen under Rule 61(1) of the Industrial Disputes (Central) Rules, 1957 (the Rules).

2.6. Respondent no. 1, as per the impugned order dated 07.04.2014, declared all seven workmen mentioned in the application given by respondent no. 2 as protected workmen. Aggrieved, the petitioner/management has come up in appeal.

3. It is submitted by the learned counsel appearing for the petitioner/management that respondent no. 1 has grossly erred in allowing the application submitted by the second respondent and



2025:DHC:10555



declaring the seven workmen mentioned therein as protected workmen, without considering whether they satisfied the essential requirements of Rule 61 of the Rules. It is submitted that as long as disciplinary proceedings are pending, no such protection could have been given. Further, mere existence of an employer–employee relationship between the parties is no ground to grant the status of protected workman to workmen who were facing disciplinary proceedings. Moreover, there are rival claimants to the very same Union. Despite this, respondent No. 2 has not produced any documents to establish that they are the actual Union representing the employees of the petitioner/management. None of the documents sought by the petitioner/management have been produced by respondent No. 2. Therefore, it is submitted that the impugned order, which reflects no application of mind and non examination or consideration of the material aspects, cannot be sustained for a moment. It is also submitted that the application



dated 21.01.2014 submitted by respondent No. 2 to the petitioner-management was premature and, therefore, could not have been considered.

4. *Per contra*, it is submitted by the learned counsel for respondent No. 2/Union that the application was filed within the time limit prescribed under Rule 61. It is further submitted that when the workmen mentioned in the application were already enjoying the status of protected workmen, disciplinary proceedings were initiated against them, and they were suspended on fabricated grounds. This, according to respondent No. 2, would not take away their right to be declared as protected workmen. It is only in a situation where the workmen have not been granted such protection and disciplinary proceedings are thereafter initiated, that the protection cannot be conferred. In the present case, the workmen named in the application were already enjoying the status of protected workmen and, therefore, the initiation of



proceedings during the subsistence of such protected status is no bar to granting them the status of protected workmen in subsequent years as well.

5. Heard both sides.

6. It would be appropriate to refer to Rule 61 of the Rules, which reads thus:-

“61. Protected workmen.

(1) Every registered trade union connected with an industrial establishment, to which the Act applies, shall communicate to the employer before the 30th April every year, the names and addresses of such of the officers of the union who are employed in that establishment and who, in the opinion of the union should be recognised as “protected workmen”. Any change in the incumbency of any such officer shall be communicated to the employer by the union within fifteen days of such change.

(2) The employer shall, subject to section 33, sub-section (4), recognise such workmen to be “protected workmen” for the purposes of sub-section (3) of the said section and communicate to the union, in writing, within fifteen days of the receipt of the names and addresses under sub-rule (1), the list of workmen recognised as protected workmen for the period of twelve months from the date of such communication.

(3) Where the total number of names received by the employer under sub-rule (1) exceeds the maximum number of protected workmen, admissible for the establishment, under section 33,



sub-section (4), the employer shall recognise as protected workmen only such maximum number of workmen:

Provided that where there is more than one registered trade union in the establishment, the maximum number shall be so distributed by the employer among the unions that the numbers of recognised protected workmen in individual unions bears roughly the same proportion to one another as the membership figure of the unions. The employer shall in that case intimate in writing to the President or the Secretary of the union the number of protected workmen allotted to it:

Provided further that where the number of protected workmen allotted to a union under this sub-rule, falls short of the number of officers of the union seeking protection, the union shall be entitled to select the officers to be recognised as protected workmen. Such selection shall be made by the union and communicated to the employer within five days of the receipt of the employer's letter.

(4) When a dispute arises between an employer and any registered trade union in any matter connected with the recognition of "protected workmen "under this rule, the dispute shall be referred to any Regional Labour Commissioner (Central) or Assistant Labour Commissioner (Central) concerned, whose decision thereon shall be final."

7. I also refer to sub-Rules (3) and (4) of Section 33 of the Industrial Disputes Act, 1947 (the Act), which reads thus:-

"33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—

(1) ***



(2) ***

(3) *Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute—*

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

Explanation.—For the purposes 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 recognised as such in accordance with rules made in this behalf.

(4) 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 the manner in which the workmen may be chosen and recognised as protected workmen.

.... ”

8. As is evident from a reading of sub-section (4) of Section



33 of the Act, 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 of five and a maximum of one hundred protected workmen. According to the petitioner, they have only around 80 employees in their organisation. Therefore, the number of workmen who can be granted the status of protected workmen cannot exceed five. However, sub-rule (3) of Rule 61 of the Rules makes it clear that where the total number of names received by the employer under sub-rule (1) exceeds the maximum number of protected workmen admissible for the establishment, the employer may recognise only such maximum number. Therefore, even if the number of persons proposed for protected status exceeds the permissible limit, the employer may restrict the recognition in compliance with the aforesaid Rule. Hence, respondent No. 2, can at best, seek protection of only five of its



office bearers to be given protected status.

9. Now coming to the question whether the workmen proposed by respondent No. 2 can be granted the status of protected workmen: According to the petitioner, five of the workmen referred to in respondent No. 2's application have been suspended and are facing disciplinary proceedings. Documents in support of this contention have also been produced. Respondent No. 2 does not dispute that disciplinary proceedings are pending against these five workmen. On the other hand, their contention is that despite such pending proceedings, the said workmen are still entitled to be granted protection.

10. In this context, I refer to a Division Bench decision of the High Court of Kerala in **HLL Lifecare Ltd. v. Hindustan Latex Labour Union (AITUC)**, 2010 SCC OnLine Ker 3762. The question considered in the said case was whether a Union was entitled to nominate a person against whom disciplinary



proceedings were pending. This was answered in the negative by holding that, although the selection of office bearers of the Union for declaration as protected workmen lies within the exclusive discretion of the Union, the management is not bound to approve the list of names forwarded by the Union. In other words, it is for the Union to select its office bearers and to forward the names of those whom it considers eligible for recognition as protected workmen. However, it is equally open to the management to examine whether any of the nominated office bearers is undesirable or ineligible for recognition, and if valid reasons exist, the management is free to reject such nominations. If the management declines to recognise any office bearer as a protected workman, it is for the Union either to contest the decision by raising a dispute before the Regional Labour Commissioner or Assistant Labour Commissioner under sub-rule (4) of Rule 61 of the Rules, whose decision shall be final, or to submit the name of



another office bearer for recognition in place of the rejected candidate.

10.1. It was further held that the management was entitled to decline recognition to any person(s) nominated by the Union for the status of protected workmen if disciplinary proceedings were pending against such workman. The Union certainly could not exercise its power under Rule 61(1) of the Rules to confer immunity upon an employee against whom disciplinary proceedings have been initiated by nominating him for recognition as a protected workman. In the said case, it was found that the workman nominated by the Union was facing disciplinary proceedings. Therefore, the action of the management in declining to grant him protected status was held to be justified, and the decision of the Assistant Labour Commissioner overruling the management's decision was found unsustainable.

11. I respectfully concur with the aforesaid dictum. As



noticed earlier, the fact that disciplinary proceedings are pending against five of the seven workmen proposed for recognition as protected workmen is not disputed by respondent No. 2/Union. That being the position, the petitioner was well within its rights to decline recognition to such workmen. The first respondent, without considering this material aspect, allowed the application filed by respondent No. 2 seeking protected status. The first respondent erred in holding that merely because an employer–employee relationship exists, the management is bound to grant protected status to the workmen named in the application.

12. In the result, the impugned orders are set aside, and the writ petition is allowed. It is for the second respondent to nominate one or more other office bearers for recognition as protected workmen, or to await the final outcome of the disciplinary proceedings and thereafter consider whether the delinquent employee(s) may be nominated for recognition again.



13. Application(s), if any pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

NOVEMBER 28, 2025