

In the High Court of Judicature at Madras

Dated: 31.01.2008

Coram:

The Honourable Mr.Justice ELIPE DHARMA RAO

and

The Honourable Ms.Justice K.SUGUNA

Writ Appeal No.583 of 2000

Tamilnadu Civil Supplies Corporation
Pirivu Anna Thozhir Sangam, rep. by
its State Secretary Mr. Sooriya Achari,
No.42, Thambusamy Road,
Kilpauk, Chennai-600 010.

..Appellant/Respondent

(Appellant 's name is substituted
as per order of the Court dated
31.01.2008 in WAMP.No.8007 of 2004)

..vs..

1. Tamilnadu Civil Supplies Corporation,
Employees Union (affiliated to Labour
Progressive Federation) rep. by its
General Secretary, Mr.M.Pechimuthu,
42, Thambuswamy Road,
Kilpauk, Chennai-600 010.
2. The Management of Tamilnadu,
Civil Supplies Corporation Limited,
rep. by its Chairman-cum-
Managing Director,
42, Thambuswamy Road,
Kilpauk, Chennai-600 010.
3. G.Viswanathan,
Minister for Food and Civil Supplies,
Govt.of Tamil Nadu,
Fort St.George,
Chennai-9.

.. Respondents/Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the Order passed in W.P.No.7054 of 1992 dated 25.11.1998 under Article 226 of the Constitution of India to issue orders, directions or writs, in particular, a writ of certiorari calling for the records of the first respondent in connection with the proceedings and issued in No. 03/80883/91, dt. 8.5.1992 and quash the said proceedings and issue such further or other orders directions

For Appellant : Mr.D.Bharatha Chakravarthy

For Respondents : Mr.V.Prakash, Senior Counsel
for Mr.M.Ramamoorthy for R1
Mr.S.Ramasamy, AAG., assisted
by Mr.V.Selvanayagam for R2

JUDGMENT

(Judgment of the Court was delivered by
ELIPE DHARMA RAO, J.,)

The above Writ Appeal is directed against the Order of the learned single Judge dated 25.11.1998 made in W.P.No.7054 of 1992.

2. In the writ petition, it is stated that the petitioner union was registered in the year 1976 and even though the State Evaluation and Implementation Committee, after evaluating the strength of various Unions in the 1st respondent Corporation, recommended that the petitioner Union be recognised, it was withdrawn in view of certain objections by other Unions. Subsequently, the said Committee in the meeting held on 22.12.1988 recommended recognition of the petitioner Union and the 1st respondent Corporation conferred recognition to the petitioner Union vide Proceedings dated 25.01.1989. On coming to know the activities of the 2nd respondent to cancel the recognition given to the petitioner Union, it filed W.P.No.18349 of 1991 to protect the petitioner Union's recognition and on 28.04.1992, the learned Judge confirmed the injunction already granted; but did not grant any relief with regard to non-recognition of any other trade Union. Against the order, the petitioner Union filed an appeal and during the pendency of the appeal, the 1st respondent granted recognition to the 2nd respondent vide Proceedings dated 08.05.1992. Challenging the same, the writ petition has been filed.

3. The learned single Judge, after hearing all the parties, gave a direction to the 1st respondent to follow the principles laid down by the decision of the Apex Court in FOOD CORPORATION OF INDIA STAFF UNION ..vs.. FOOD CORPORATION OF INDIA reported in 1995(1) LLN 783 and also the criteria for recognition of union laid down in the Code of Discipline at the 15th Session of Indian Labour Conference in the

grant of recognition of unions by order dated 25.11.1998. Aggrieved by the same, the second respondent has preferred the present appeal.

4. Heard Mr.Bharatha Chakravarthy, learned counsel appearing for the appellant, Mr.Prakash, learned senior counsel appearing for the 1st respondent and Mr.S.Ramasamy, learned Additional Advocate General appearing for the 2nd respondent.

5. After hearing the arguments at length, all the learned counsel have submitted that they are affected with the operative portion of the judgment of the learned single Judge, which reads as follows:

"Considering the grievance of the petitioner and the relief prayed for in the above writ petitions, I am of the opinion that it is suffix to direct the first respondent herein, in future, to follow the principles laid down by the decision of the Apex Court in FOOD CORPORATION OF INDIA STAFF UNION .. vs.. FOOD CORPORATION OF INDIA reported in 1995(1) LLN 783, referred to above, and also the criteria for recognition of union laid down in the Code of Discipline at the 15th Session of Indian Labour Conference, strictly, in the grant of recognition of unions in the case of the petitioner, or in the case of the second respondent, or any other union afresh, uniformly, and in any event, later than six months from the date of receipt of this order, and till then, the status quo shall be maintained".

6. The learned Additional Advocate General appearing for the 2nd respondent herein submitted that the check off system is prevailing in the State from 1994, and therefore, the Corporation may be allowed to follow the same instead of secret ballot system.

7. On the other hand, the learned senior counsel Mr.Prakash appearing for the first respondent/writ petitioner submitted that the Supreme Court, in its judgment 1995(1) LLN 783(FCI's case (cited supra), has expressed its opinion as follows:

"The 'check off' system which once prevailed in this domain has lost its appeals, and so, efforts are to find out which other system can foot the bill. The method of secret ballot is being gradually accepted. All concerned would, however, like to see that this method is so adopted and adjusted that it reflects the correct position as regards membership of the different trade unions operating in one and the same industry, establishment or undertaking".

8. The learned senior counsel further submitted that the Supreme Court perused the instruction No.25 of 1980, dated 18th December 1980 in the Memorandum issued by the Chief Labour Commissioner, Ministry

of Labour, Government of India and following the above instruction and after getting consent of both parties, the Supreme Court has laid norms and procedures for assessing the representative character of Trade unions by the 'secret ballot system'. The norms fixed by the Hon'ble Supreme Court, in the above judgment, are as follows:

(i) As agreed to by the parties the relative strength of all the eligible unions by way of secret ballot be determined under the overall supervision of the Chief Labour Commissioner (Central).

(ii) The Chief Labour Commissioner(Central) will notify the Returning Officer who shall conduct the election with the assistance of the Food Corporation of India. The Returning Officer shall be an officer of the Government of India, Ministry of Labour.

(iii) The Chief Labour Commissioner(Central) shall fix the month of election while the actual date/dates of election shall be fixed by the Returning Officer.

(iv) The Returning Officer shall require the Food Corporation of India to furnish sufficient number of copies of the lists of all the employees/workers (categories III and IV) governed by the Food Corporation of India(Staff) Regulations, 1971, borne on the rolls of the Food Corporation as on the date indicated by the Chief Labour Commissioner(Central). The list shall be prepared in the pro forma prescribed by the Chief Labour Commissioner (Central). The said list shall constitute the voters list.

(v) The food Corporation of India shall display the voters list on the notice board and other conspicuous places and shall also supply copies thereof to each of the unions for raising objections, if any. The unions will file the objections to the Returning officer within the stipulated period and the decision of the 'Returning Officer' shall be final.

(vi) The Food Corporation of India shall made necessary arrangement to:

(a) give wide publicity to the date/dates of election by informing the unions and by affixing notices on the notice-board and also at other conspicuous places for the information of all the workers;

(b) print requisite number of ballot papers in the pro forma prescribed by the Chief Labour Commissioner (Central) incorporating therein the names of all the

participating unions in alphabetical order after ascertaining different symbols of respective unions;

(c) the ballot papers would be prepared in the pro forma prescribed by the Chief Labour Commissioner (Central) in Hindi/English and the concerned regional language;

(d) set up requisite number of polling stations and booths near the premises where the workers normally work; and

(e) provide ballot boxes with requisite stationery, boards, sealing wax etc.

(vii) The Returning Officer shall nominate Presiding Officer for each of the polling station/booth with requisite number of polling assistants to conduct the election in an impartial manner. The Presiding Officers and the polling assistants may be selected by the Returning officer from amongst the officers of the Food Corporation of India.

(viii) The election schedule indicating the dates for filing of nominations, scrutiny of nominations papers, withdrawal of nominations, polling, counting of votes and the declaration of results, shall be prepared and notified by the Returning Officer in consultation with the Food Corporation of India. The election schedule shall be notified by the Returning Officer well in advance and at least one month's time shall be allowed to the contesting unions for canvassing before the date of filing the nominations.

(ix) To be eligible for participating in the election, the unions must have valid registration under the Trade Unions Act, 1926, for one year with an existing valid registration on the first day of filling of nomination.

(x) The Presiding Officer shall allow only one representative to be present at each polling station/booth as observer.

(xi) At the time of polling, the polling assistant will first score out the name of the employee/workman who comes for voting, from the master copy of the voters list and advise him thereafter to procure the secret ballot paper from the Presiding officer.

(xii) The Presiding Officer will hand over the ballot paper to the workman/employee concerned after affixing his signatures thereon. The signatures of the workman/employee casting the vote shall also be obtained on the counterfoil of

the ballot paper. He will ensure that the ballot paper is put inside the box in his presence after the voter is allowed to mark on the symbol of the candidate with the inked rubber stamp in camera. No employee/workman shall be allowed to cast his vote unless he produces his valid identity card before the Presiding Officer concerned. In the event of non-production of identity card due to any reason, the voter may bring in an authorisation letter from his controlling officer certifying that the voter is the bona fide employee of the Food Corporation of India.

(xiii) After the close of the polling, the Presiding Officer shall furnish detailed ballot paper account in the pro forma prescribed by the Chief Labour Commissioner(Central) indicating total ballot papers received, ballot papers used, unused ballot papers available, etc., to the Returning Officer.

(xiv) After the close of the polling, the ballot boxes will be opened and counted by the Returning Officer or his representative in the presence of the representatives of each of the unions. All votes which are marked more than once, spoiled, cancelled or damaged etc., will not be taken into account as valid votes but a separate account will be kept thereof.

(xv) The contesting unions through their representatives present at the counting place may be allowed to file applications for recounting of votes to the Returning officer. The request would be considered by the Returning Officer and in a given case if he is satisfied that there is reason to do so he may permit recounting. However, no application for recounting shall be entertained after the results of the votes are declared.

(xvi) The result of voting shall be compiled on the basis of valid votes polled in favour of each union in the pro forma prescribed by the Chief Labour Commissioner(Central) and signatures obtained thereon from the representatives of all the unions concerned as a proof of counting having been done in their presence.

(xvii) After declaring the results on the basis of the votes polled in favour of each union by the Returning Officer, he will send a report of his findings to the Chief Labour Commissioner(Central).

(xviii) The union/unions obtaining the highest number of votes in the process of election shall be given recognition by the Food Corporation of India for a period of five years from the date of the conferment of the recognition.

(xix) It would be open to the contesting unions to object to the result of the election or any illegality or material irregularity which might have been committed during the election. Before the Returning Officer such objection can only be raised after the election is over. The objection shall be heard by the Chief Labour Commissioner(Central) and dispose of within 30 days of the filing of the same. The decision of the Chief Labour Commissioner(Central) shall be final subject to challenge before a competent Court, if permitted under law".

9. On the other hand, the learned counsel appearing for the appellant submitted that the learned Judge mentioned the abovesaid one union to recognise, which is not correct as per the Supreme Court judgment. Therefore, the order has to be set aside to that extent.

10. It is the further case of the learned Additional Advocate General that if the secret ballot system is adopted, it will cause lot of expenditure to the State. Therefore, it is better to follow the 'check off system'.

11. We are unable to accept the same since in our democratic Society, the only way for assessment of representative character of the Trade unions is the secret ballot system as has been observed by the Hon'ble Supreme Court. Moreover, the period for recognition of the trade unions in the writ petition is over long back. Therefore, after considering the facts and circumstances of the case, we consider it appropriate to give a direction to the 1st respondent Corporation to take appropriate steps to conduct elections to assess the representative character of the unions within a period of six months, following the guidelines issued by the Supreme Court in the FCI's case (cited supra).

Writ appeal is disposed of. However, there will be no order as to costs.

Sd/-
Asst. Registrar.

/true copy/
WEB COPY
Sub Asst. Registrar.

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To

The Chairman-cum-Managing
Director,
The Management of Tamilnadu,
Civil Supplies Corporation Limited,
42, Thambuswamy Road,
Kilpauk, Chennai-600 010.

+ one cc to M/s. Bharathe chakravarthy, Advocate, SR.4740

+ one cc to M/s. G. Ramapriya, Advocate, SR.4596

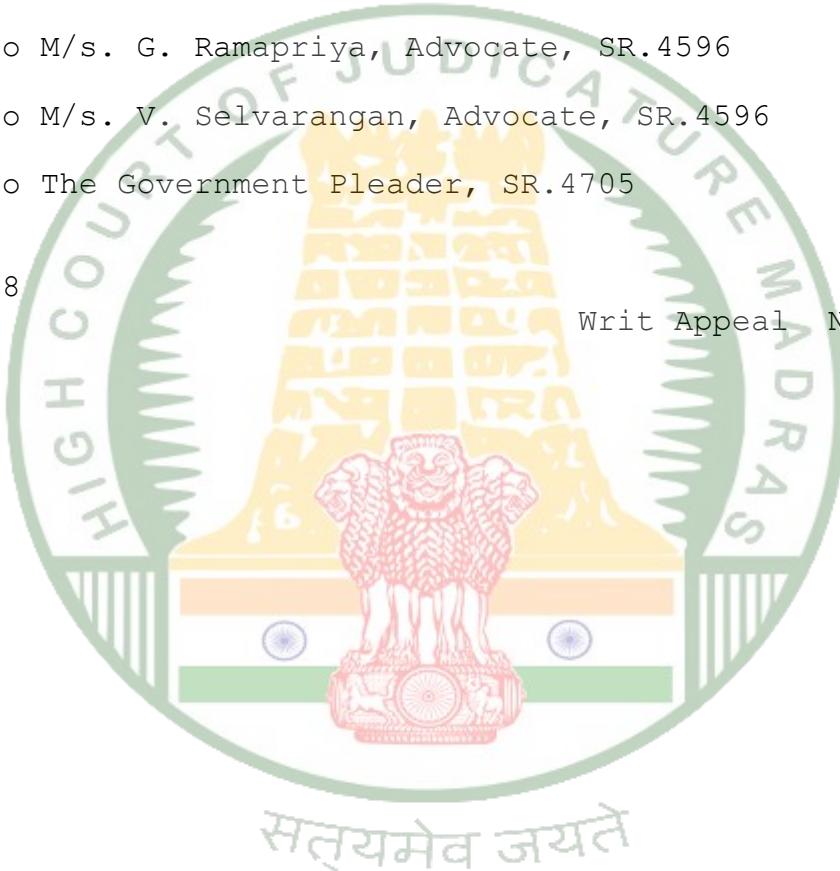
+ one cc to M/s. V. Selvarangan, Advocate, SR.4596

+ one cc to The Government Pleader, SR.4705

AVM(CO)

RP 28.02.08

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