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*W.A.No.1729 of 2011
and W.P.Nos.17480 & 19188 of 2014
and W.P.No.13095 of 2016*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	30.09.2024
<i>Pronounced on</i>	22.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C. KUMARAPPAN

W.A.No.1729 of 2011
and W.P.Nos.17480 & 19188 of 2014
and W.P.No.13095 of 2016
and M.P.Nos.1 of 2011, 1 to 3 & 1 of 2014
and W.M.P.Nos.11461 & 11462 of 2016

DMK ICF LABOUR UNION,
Rep. by its General Secretary Mr.D.Kubendiran,
No.161, MTH Road, Villivakkam,
Chennai – 600 049.

... Appellant in W.A.No.1729/2011

ICF Mazdoor Sangh,
Affiliated with National Federation of
Indian Railway Men & Indian National
Trade Union Congress,
International Transport Workers Federation (ITF),
Regn.No.2837/CNI, dated 20.03.01,
Rep. by the General Secretary,
R.Gurunathan,
350/1, Konnur High Road,
ICF, Chennai – 38.

*... Petitioner in W.P.Nos.17480/2014
& 13095/2016*

DMK ICF Labour Union,



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(Regn.No.2694/CNI),
(Affiliated to Labour Progressive Federation),
Rep. by its General Secretary,
Nos.1 & 2, (Old nO.6), ICF Shopping Complex,
ICF, Chennai – 600 038. ... *Petitioner in WP.No.19188/2014*

Vs.

1.Union of India,
Ministry of Railways,
(Railway Board),
Rail Bhavan, New Delhi.

2.The General Manager,
Integral Coach Factory,
Chennai – 600 038.

3.The Chief Mechanical Engineer,
Integral Coach Factory,
Chennai – 600 083.

... *Respondents in W.A.No.1729/2011*

1.The Govt. of India,
Rep. by the Secretary to Govt.,
Ministry of Railways,
New Delhi.

2.The Railway Board,
Rep. by the Director (Establishment Labour),
Railway Board,
New Delhi.

3.The General Manager,
Integral Coach Factory,
Chennai – 600 038.

... *Respondents in W.P.Nos.17480/2014
& 13095/2016*

1.Union of India,
Rep. by the Secretary,



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Ministry of Railways,
New Delhi.

2.The Chairman,
Railway Board,
'Rail Bhavan', New Delhi.

3.Integral Coach Factory,
Rep. by its General Manager,
ICF Colony Post,
Chennai – 600 038.

4.Chief Personnel Officer,
Integral Coach Factory,
ICF Colony Post,
Chennai – 600 083.

... Respondents in W.P.No.19188/2014

Prayer in WA.No.1729/2011: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the dismissal order dated 24.08.2011 passed by the learned Single Judge of this Court in W.P.No.19705 of 2011.

Prayer in WP.No.17480/2014: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to adopt the Secret Ballot System for Integral Coach Factory Employees to elect the unions for recognition of the respondents to represent the grievances of the Workers of Integral Coach Factory on expiry of the tenure of the Staff Council System in September 2014 as done in the case of Rail Coach Factory, Kapurthala on the basis of the judgment of the Hon'ble Division Bench, Delhi High Court in LPA.No.550/10, dated 30.01.12 confirmed by the Hon'ble Apex Court in Special Leave Petition



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(Civil) C.C.No.23523/12 dated 22.1.13.

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Prayer in WP.No.19188/2014: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents herein to hold secret ballot election for the purpose of granting recognition as a spokesman of the employees and workmen working in the 3rd respondent within a time frame.

Prayer in WP.No.13095/2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 2nd respondent in connection with the order passed by her in her proceedings in No.2014/E(LR)III/LR/CRT/4 dated 11.3.16 and quash the same and direct the respondents to select the Trade Union for the bilateral talks on behalf of the employees by way of secret ballot election.

For Appellant : Mr.S.Rajendiran
(in *W.A.No.1729/2011*)

For Petitioner : Mr.R.Singaravelan,
(in *W.P.Nos.17480/2014* Senior Advocate
& *13095/2016*) for Ms.M.Srividhya

For Petitioner : Mr.K.M.Ramesh,
(in *W.P.No.19188/2014*) Senior Advocate
for Mr.S.Apunu

For Respondents : Mr.P.T.Ram Kumar,
(in *all appeal & petitions*) Standing Counsel

COMMON JUDGMENT



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M.S.RAMESH, J.

To attain self-sufficiency for the components meant for Indian Railways from within the internal resources of the country, 8 Railway Production Units (RPU) have been set up at different parts of the country, which are functioning as independent units under the control of the Railway Board. These RPUs are as follows:-

- a) *Chittaranjan Locomotive Works at Chittaranjan for manufacture of various types of electric locomotives.*
- b) *Diesel Locomotive Works at Varanasi for manufacture of various types of Diesel Locomotives, Diesel engines, standby Generating sets and their spares.*
- c) *Integral Coach Factory at Perambur for manufacturing of coaching stocks of various types and their spares.*
- d) *Rail Wheel Factory at Yelahanka for manufacture of various types of wheels, axles and wheel sets.*
- e) *Rail Coach Factory at Kapurthala for manufacture of coaching stocks of various types and their spares.*
- f) *Diesel Modernization Works, Patiala for midterm rehabilitation and modernization of Diesel Locomotives and manufacture of critical spares.*
- g) *Rail Wheel Plant, Bela Distt Saran (Bihar) for manufacture of Wheel.*
- h) *Modern Coach Factory, Lalgang, Raebareli (UP) for manufacture of*



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2. The grievances of the Trade Unions in this Writ Appeal and Writ Petitions are that the Staff Council alone is the body constituted to put forth the grievances of the Trade Unions in RPU's, whereas, the Trade Unions in most of the Zonal Railways are permitted to represent the workmen for redressal of their grievances.

3. While 12 members of the Staff Councils are elected by conducting secret ballots without any Trade Union Banner, 12 members are nominated from the administrative side. Since the Staff Councils are composed of equal members of the Staff Management as that of the workers, the efficiency in addressing the grievance of the workmen is seriously affected, owing to difference of opinion between the equally divided groups. This apart, the Council is headed by the gazetted officer nominated by the General Manager creating further dominance of the Management. It is in this background, these Trade Unions seek for direction from this Court to the Integral Coach Factory (ICF), Perambur, to adopt a Secret Ballot System for election of representatives from the Trade Unions, who shall address the



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grievances of the workers, in the place of the Staff Council System. When a similar request was made by DMK ICF Labour Union before this Court in WP.No.19705 of 2011, seeking for recognition of Trade Unions for representing the employees of ICF through conduct of secret ballot, a learned Single Judge had rejected the plea through an order dated 24.08.2011, by holding that there is no law for providing recognition of Trade Union in the State of Tamil Nadu. This order of the learned Single Judge is assailed in WA.No.1729 of 2011.

4. In this background, when Railways had issued instructions on 26.06.2002, to consider the applications by the affiliates of the Bharat Rail Mazdoor Sangh (BRMS) and others for grant of recognition, the same was challenged by another Trade Union before this Court in WP.No.25274 of 2002 and by an order dated 17.10.2003, a learned Single Judge of this Court had set aside the instructions dated 26.06.2002, by placing reliance on the judgment of the Hon'ble Supreme Court in '**Food Corporation of India Staff Union Vs. Food Corporation of India & others**' reported in '**1995 Supp (1) SCC 678**', and holding that the only feasible and reliable way of testing the strength of a Trade Union, was to adopt the Secret Ballot System, in place of the then existing system of representation. This order of Writ



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Petition came to be ultimately challenged before the Hon'ble Supreme Court, which Special Leave Petition was dismissed on 08.03.2004, upholding the decision of the Madras High Court.

5. Incidentally, when a Trade Union attached to one of RPU, namely Rail Coach Factory at Kapurthala, had sought for recognition of the registered Trade Union, representing the employees of RPU, a learned Single Judge of the Delhi High Court had issued a Writ of Mandamus to the RPU, to permit the Trade Unions to participate in the secret ballot for determining which railway unions should be accorded recognition and consequently, represent in the Joint Consultative Machinery (JCM). The order of the learned Single Judge of the Delhi High Court was challenged in LPA No.550 of 2010 which was dismissed on 30.01.2012. So also the SLP against the same was dismissed on 22.01.2013. Consequently, the Railway Board, through its letter dated 23.01.2014, extended secret ballot election to the RPU at Kapurthala for recognition of Trade Union for representation in JCM.

6. The grievance of these Trade Unions functioning at ICF is that the system of Staff Council deprives the workers of an effective representation



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since the composition of the Council is equally split between the Management and the representatives of the Trade Unions and further, the Council is headed by the General Manager.

7. Before we further delve into the claim of the Trade Unions in these cases, we deem it appropriate to address the rights of the Trade Union for the purpose of collective bargaining. The right to form association or Trade Unions, is a fundamental right under Article 19(1)(c) of the Constitution of India. Section 8 of the Trade Unions Act provides for registration of a Trade Union if all the requirements of the said enactment are fulfilled. The right to form associations and unions and provide for their registration was recognized, obviously for conferring certain rights on Trade Unions. The necessity to form unions is for voicing the demands and grievance of the labour. Trade Unionists act as mouthpieces of labour. The strength of a Trade Union depends on its membership. Therefore, the Trade Unions with sufficient membership strength are able to bargain more effectively with the Managements, as held by the Hon'ble Supreme Court in the case of '**B.R. Singh Vs. Union of India**' reported in '**(1989) 4 SCC 710**'.



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8. When there are numerous Trade Unions in a given organization and when it comes to collective bargaining for redressal of the grievances of the workers, the very object to form an association would stand enervated. The rights of the workers must be interpreted in a purposive manner and with a social objective of promoting industrial harmony. The interpretation of labour legislation in a matter of this nature must be in the light of Article 43-A of the Constitution of India, ensuring effective participation of workers during collective bargaining. We deem it appropriate to mention here that the right to identify a sole bargaining agent has already been recognized by the Courts.

9. In *Food Corporation of India Staff Union's* case (*supra*), the Hon'ble Supreme Court had recognized the system of secret ballot and 'sole bargaining system' in the following manner:-

“1. Collective bargaining is the principal raison d'être of the trade unions. However, to see that the trade union, which takes up the matter concerning service conditions of the workmen truly represents the workmen employed in the establishment, the trade union is first required to get itself registered under the provisions of Trade Unions Act, 1926. This gives a stamp of due formation of the trade union and



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assures the mind of the employer that the trade union is an authenticated body; the names and occupation of whose office-bearers also become known. But when in an establishment, be it an industry or an undertaking, there are more than one registered trade unions, the question as to with whom the employer should negotiate or enter into bargaining assumes importance, because if the trade union claiming this right be one which has as its members minority of the workmen/employees, the settlement, even if any arrived between the employers and such a union, may not be acceptable to the majority and may not result in industrial peace. In such a situation with whom the employer should bargain, or to put it differently who should be the sole bargaining agent, has been a matter of discussion and some dispute. The “check off system” which once prevailed in this domain has lost its appeal; and so, efforts are on 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 adapted 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....”

10. In 'All Escorts Employees Union Vs. State of Haryana & others'

reported in '(2017) 16 SCC 336' the Hon'ble Supreme Court had held that



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the object of Trade Union is primarily for the purpose of regulating relations between workmen and employers or between workmen and workmen or between employers and employers. Such a grievance redressal system would only be effective, when the elected representatives of the workmen bargain their rights with the Management through the Trade Union alone.

11. On the other hand, when such bargaining on behalf of the workmen through the Trade Union are accompanied by equal number of representations of the Management, forming a Council, we are unable to appreciate, as to how 12 representatives of the workmen could independently and efficaciously address the grievances of the workers before JCM, more particularly, when the adverse influence and dominance of the Management representatives in the Council cannot be ruled out. This is precisely the grievance of the Trade Unions of ICF on the system of grievance redressal through the Staff Council.

12. Incidentally, the system of representation through Staff Council, functioning in the Zonal Railways, was abolished and a secret ballot election of recognition of Trade Unions in the Indian Railways was



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introduced. The final modalities for holding such secret ballot election in the Zonal Railways have also been introduced in the year 2019. Whereas, the RPU, which is an integral part of the Indian Railways and has been constituted to attain self-sufficiency for Rolling Stock and other components meant for Indian Railways alone, has been following the system of negotiations through Staff Councils.

13. The learned standing counsel for ICF made an attempt to justify this aspect by submitting that ICF is an important unit of the Indian Railways involved in an indigenous manufacture of electric and diesel locomotives, engines, spares etc., and therefore, the conditions of service of the workmen in these RPUs, cannot be equated with that of the workmen under the Zonal Railways.

14. We do not approve such a submission for the simple reason that the workmen in the Zonal Railways are involved in more crucial and critical service conditions, commuting the general public and goods between different stations and any disruption in the day-to-day affairs of the Zonal Railways, would directly affect the public at large, unlike the RPU. It is



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therefore more pivotal that an effective system for bargaining is adopted.

15. The Trade Unions in the present cases seek for Secret Ballot System for ICF employees to elect the representatives from various Trade Unions for representing their grievances in the JCM. As already observed by us hereinbefore, when the Railways had earlier issued instructions to consider applications by the affluents of BRMS and others, for grant of recognition, Southern Railway Mazdoor Union had challenged these instructions in WP.No.25274 of 2002 before this Court, wherein, the instructions of the Railways were set aside, holding that the only feasible and reliable way of testing was to adopt the secret ballot system. This order of the learned Single Judge of this Court came to be confirmed by the Hon'ble Supreme Court.

16. Likewise, when a Trade Union attached to the Rail Coach Factory at Kapurthala had sought for recognition of the registered Trade Unions and for formulation of modalities for conducting secret ballot for the purpose of grant of such regulation to the Trade Union, a learned Single Judge of the Delhi High Court had passed an order in WP.(Civil).No.26 of 2008, dated



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03.03.2010, directing the Railways to apply the modalities spelt out in their circular dated 09.10.2007 to RPU at Kapurthala and permit the Trade Union therein, to participate in the secret ballot for determining which Railway Unions should be accorded recognition and consequently, granted representation in JCM. The order in the Writ Petition before the Delhi High Court was also affirmed by the Hon'ble Supreme Court.

17. In the case of '**Chairman, SBI & another Vs. All Orissa State Bank Officers' Association & others**' reported in '**2002 (5) SCC 669**', the object behind collective bargaining by a Trade Union was discussed by the Hon'ble Supreme Court as below:-

.... *“15. With growth of industrialization in the country and progress made in the field of trade union activities the necessity for having multiple unions in an industry has been felt very often. Taking note of this position power has been vested in the management to recognize one of the trade unions for the purpose of having discussions and negotiations in labour-related matters. This arrangement is in recognition of the right of collective bargaining of workmen/employees in an industry. To avoid arbitrariness, bias and favouritism in the matter of recognition of a trade union, rules have been framed laying down the procedure*



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for ascertaining which of the trade unions commands support of majority of workmen/employees. Such procedure is for the benefit of the workmen/employees as well as the management/employer since collective bargaining with a trade union having the support of majority of workmen will help in maintaining industrial peace and will help smooth functioning of the establishment. Taking note of the possibility of multiple trade unions coming into existence in the industry, provisions have been made in the Rules conceding certain rights to non-recognized unions. Though such non-recognized unions may not have the right to participate in the process of collective bargaining with the management/employer over issues concerning the workmen in general, they have the right to meet and discuss with the employer or any person appointed by him on issues relating to grievances of any individual member regarding his service conditions and to appear on behalf of their members in any domestic or departmental enquiry held by the employer or before the Conciliation Officer or Labour Court or Industrial Tribunal. In essence, the distinction between the two categories of trade unions is that while the recognized union has the right to participate in the discussions/negotiations regarding general issues affecting all workmen/employees and settlement, if any, arrived at as a result of such discussion/negotiations is binding on all



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workmen/employees, whereas a non-recognized union cannot claim such a right, but it has the right to meet and discuss with the management/employer about the grievances of any individual member relating to his service conditions and to represent an individual member in domestic inquiry or departmental inquiry and proceedings before the Conciliation Officer and adjudicator. The very fact that certain rights are vested in a non-recognized union shows that the Trade Unions Act and the Rules framed thereunder acknowledge the existence of a non-recognised union. Such a union is not a superfluous entity and it has a relevance in specific matters relating to administration of the establishment. It follows, therefore, that the management/employer cannot outrightly refuse to have any discussion with a non-recognized union in matters relating to service conditions of individual members and other matters incidental thereto. It is relevant to note here that the right of the citizens of this country to form an association or union is recognized under the Constitution in Article 19(1)(c). It is also to be kept in mind that for the sake of industrial peace and proper administration of the industry it is necessary for the management to seek cooperation of the entire workforce. The management by its conduct should not give an impression as if it favours a certain section of its employees to the exclusion of others which, to say the least,



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will not be conducive to industrial peace and smooth management. Whether negotiation relating to a particular issue is necessary to be made with representatives of the recognized union alone or relating to certain matters concerning individual workmen it will be fruitful to have discussion/negotiations with a non-recognized union of which those individual workmen/employees are members is for the management or its representative at the spot to decide. At the cost of repetition we may state that it has to be kept in mind that the arrangement is intended to help in resolving the issue raised on behalf of the workmen and will assist the management in avoiding industrial unrest. The management should act in a manner which helps in uniting its workmen/employees and not give an impression of a divisive force out to create differences and distrust amongst workmen and employees....”

18. We have already expressed that a Secret Ballot System for determining the recognition of a Trade Union in RPU would be more suitable and have rendered our reasons thereto. We are now apprised that such a system, introduced in the Rail Coach Factory at Kapurthala, pursuant to the orders of the Delhi High Court, is functioning smoothly. In this background, we are of the affirmed view that the same system of secret

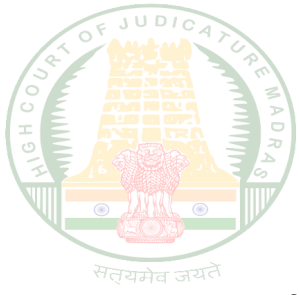


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ballot for recognition of Trade Union would be more apt and conducive for redressal of the grievances of the workmen of ICF. Thus, the Trade Unions in the present case, are entitled to succeed.

19. The learned Single Judge in his order passed in WP.No.19705 of 2011 dated 24.08.2011, had rejected the plea of one of the Trade Unions, predominantly on the ground that there is no law in the State of Tamil Nadu for recognition of a Trade Union. We have rendered our findings with regard to preferability of having a recognized Trade Union through a secret ballot and in view of the same, the order of the learned Single Judge passed in WP.No.19705 of 2011, is hereby set aside. Accordingly, a Writ of Mandamus is hereby issued to the respondents herein, to forthwith formulate modalities, for holding a secret ballot for recognition of Trade Unions in the Integral Coach Factory, Perambur and consequently, permit the representatives of such elected Trade Unions for negotiations/bargaining in the Joint Consultative Machinery. Such a decision shall be taken atleast within a period of three (3) months from the date of receipt of a copy of this order.



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20. With the above directions, the Writ Appeal and the Writ Petitions stand allowed. No costs. Connected miscellaneous petitions are closed.

[M.S.R., J] [C.K., J]
22.10.2024

Index: Yes
Speaking order
Internet: Yes
Neutral Citation: Yes

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To

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Ministry of Railways,
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