



2024:KER:63651

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946

WP(C) NO. 1071 OF 2024

PETITIONER:

FACT UNITED EMPLOYEES LIBERATION,
REG. NO. TU19718, BUILDING NO.8/540-B,
THATHAPILLY P.O, NORTH PARAVOOR,
ERNAKULAM,
REPRESENTED BY ITS GENERAL SECRETARY,
PIN - 683520

BY ADVS.
R.SANJITH
C.S.SINDHU KRISHNAH

RESPONDENTS:

- 1 THE FERTILISERS AND CHEMICALS TRAVANCORE LIMITED,
UDYOGAMANDAL, ERNAKULAM,
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR,
PIN - 683501
- 2 THE CHAIRMAN AND MANAGING DIRECTOR,
FERTILISERS AND CHEMICALS TRAVANCORE LIMITED,
UDYOGAMANDAL, ERNAKULAM, PIN - 683501
- 3 GENERAL MANAGER (HR & A),
FERTILISERS AND CHEMICALS TRAVANCORE LIMITED,
UDYOGAMANDAL, ERNAKULAM, PIN - 683501
- 4 REGIONAL JOINT LABOUR COMMISSIONER, (CENTRAL),
OFFICE OF THE REGIONAL COMMISSIONER (CENTRAL),
OLIMUGHAL, VAYUSENA ROAD, THRIKKAKKARA,



W.P.(C) No.1071/2024

: 2 :

KAKKANAD, ERNAKULAM, PIN - 682021

- 5 FACT EMPLOYEES ASSOCIATION (CITU),
FERTILISERS AND CHEMICALS TRAVANCORE LIMITED,
UDYOGAMANDAL, ERNAKULAM,
REPRESENTED BY ITS GENERAL SECRETARY,
PIN - 683501
- 6 FACT WORKERS UNION,
FERTILISERS AND CHEMICALS TRAVANCORE LIMITED,
UDYOGAMANDAL, ERNAKULAM,
REPRESENTED BY ITS GENERAL SECRETARY,
PIN - 683501
- 7 FACT EMPLOYEES CONGRESS (INTUC),
FERTILISERS AND CHEMICALS TRAVANCORE LIMITED,
UDYOGAMANDAL, ERNAKULAM,
REPRESENTED BY ITS GENERAL SECRETARY,
PIN - 683501
- 8 FACT EMPLOYEES ORGANISATION (BMS),
FERTILISERS AND CHEMICALS TRAVANCORE LIMITED,
UDYOGAMANDAL, ERNAKULAM,
REPRESENTED BY ITS GENERAL SECRETARY,
PIN - 683501
- 9 FACT (CD) EMPLOYEES ASSOCIATION,
FERTILISERS AND CHEMICALS TRAVANCORE
LIMITED, AMBALUMEDU P.O, ERNAKULAM,
REPRESENTED BY ITS GENERAL SECRETARY,
PIN - 682303
- 0 FACT (CD) EMPLOYEES SANGH,
FERTILISERS AND CHEMICALS TRAVANCORE LIMITED,
AMBALUMEDU P.O, ERNAKULAM,
REPRESENTED BY ITS GENERAL SECRETARY,
PIN - 682303
- 11 FACT (CD) WORKERS CONGRESS (INTUC),
FERTILISERS AND CHEMICALS TRAVANCORE LIMITED,
AMBALUMEDU P.O, ERNAKULAM,
REPRESENTED BY ITS GENERAL SECRETARY,
PIN - 682303



W.P.(C) No.1071/2024

: 3 :

12 FACT WORKERS ORGANISATION,
 REG. NO. 07-43/95, UDYOGAMANDAL, ERNAKULAM,
 REPRESENTED BY ITS SECRETARY GENERAL,
 PIN - 683501

BY ADVS.
M.GOPIKRISHNAN NAMBIAR
K.MALINI
K.JOHN MATHAI
JOSON MANAVALAN
KURYAN THOMAS
PAULOSE C. ABRAHAM
RAJA KANNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 31.07.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



W.P.(C) No.1071/2024

: 4 :

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N. NAGARESH, J.

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W.P.(C) No.1071 of 2024

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Dated this the 31st day of July, 2024

J U D G M E N T

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The petitioner is a registered Trade Union of workmen in the services of the 1st respondent-Fertilisers and Chemicals Travancore Limited. The writ petition has been filed challenging Ext.P8 proceedings rejecting the request of the petitioner to conduct Referendum in Cochin Division (CD) of the 1st respondent-Company.

2. The petitioner states that the petitioner has requested the 2nd respondent-Chairman and Managing Director to take immediate steps to conduct Trade Union



W.P.(C) No.1071/2024

: 5 :

Referendum in the Cochin Division. As the respondents did not yield to the request, the petitioner approached this Court filing W.P.(C) No.31287/2023. As per Ext.P7 judgment, this Court directed the 1st respondent to consider Ext.P2 representation. The 3rd respondent, however, rejected the representation as per Ext.P8.

3. In Ext.P8, it has been stated that the petitioner is not a signatory in Ext.P4 minutes and hence the petitioner cannot demand for conducting a Referendum. The petitioner states that the petitioner-Trade Union was registered only on 22.07.2022 and that is the reason why the petitioner is not a signatory to Ext.P4. The reasoning stated in Ext.P8 is without any logic.

4. Respondents 1 to 3 opposed the writ petition filing a counter affidavit. None of the fundamental rights of the petitioner has been infringed and therefore a writ petition is not maintainable, contended respondents 1 to 3. The respondents do not have a statutory duty to conduct



W.P.(C) No.1071/2024

: 6 :

Referendum. The petitioner has to establish that it has a legal right to seek for the performance of statutory duty by the respondents, to maintain this writ petition.

5. Respondents 1 to 3 stated that five Trade Unions are already recognised in the Company's Cochin Division. Respondents 1 to 3 further submitted that pursuant to the directions of this Court, the 4th respondent-Regional Joint Labour Commissioner (Central) held a Referendum through secret ballot on 05.04.2023 in Udyogamandal Division and out of the four Trade Unions which participated in the Referendum, three Trade Unions secured 20% or more of the total votes.

6. I have heard the learned counsel for the petitioner, the learned Standing Counsel representing respondents 1 to 3 and the learned counsel for the 4th respondent.

7. The prayer of the petitioner is to conduct a Referendum through secret ballot in the Cochin Division of



W.P.(C) No.1071/2024

: 7 :

the 1st respondent-Company in order to recognise representative Trade Unions.

8. Collective bargaining is the mode of work of Trade Unions. It is to be ensured that the Trade Unions which takes up the issues concerning the service conditions of workmen truly represent the workmen employed in the establishment. When in an establishment there are more than one registered Trade Union, the question as to with whom the employer should negotiate or enter into bargaining assumes importance, because if the Trade Union which negotiates has as its members minority of the workmen / employees, the settlement, even if any arrived between the employer and such a Union, may not be acceptable to the majority and may not result industrial peace.

9. Who should be the sole bargaining agent, has been a matter of discussion and dispute. The Hon'ble Apex Court has held in the judgment in ***Food Corporation of India Staff Union v. Food Corporation of India and***



W.P.(C) No.1071/2024

: 8 :

others [1995 Suppl 1 SCC 678] that the check off system which once prevailed in this domain has lost its appeal. The method of secret ballot is now being gradually accepted.

10. In the case of the 1st respondent, it is conceded that a Referendum by secret ballot has already been conducted in their Udyogamandal Division. No such Referendum has been conducted in the Cochin Division so far. In the facts of the case, I am of the view that the representative character of Trade Union functioning in the Cochin Division of the 1st respondent-Company has to be determined by a Referendum through secret ballot.

The writ petition is therefore disposed of directing respondents 1 to 4 to take necessary steps to hold Referendum by secret ballot in the Cochin Division of the 1st respondent-Company. The Referendum shall be conducted by respondents 1 to 3 under the supervision of the 4th respondent. Respondents 1 to 4 are directed to convene a preliminary meeting in order to conduct Referendum by



W.P.(C) No.1071/2024

: 9 :

secret ballot. The process of Referendum shall be completed as expeditiously as possible.

Sd/-

N. NAGARESH, JUDGE

aks/19.08.2024



W.P.(C) No.1071/2024

: 10 :

APPENDIX OF WP(C) 1071/2024PETITIONER'S EXHIBITS:

- Exhibit P1 TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF TRADE UNION DATED 22/07/2022
- Exhibit P1(a) TRUE COPY OF THE RELEVANT PAGES OF THE BYELAWS
- Exhibit P2 . TRUE COPY OF THE REPRESENTATION DATED 14/08/2023
- Exhibit P3 TRUE COPY OF THE POSTAL ACKNOWLEDGEMENT CARD DATED 16/08/2023
- Exhibit P4 TRUE COPY OF THE MINUTES OF THE DECISION HELD ON 05-04-2022
- Exhibit P5 TRUE COPY OF THE JUDGMENT IN W.P.C NO. 15901/2022 DATED 30/05/2022
- Exhibit P6 TRUE COPY OF THE PROCEEDINGS BEARING NO. CMD-CO-057 DATED 16/08/2022 OF THE 2ND RESPONDENT
- Exhibit P7 TRUE COPY OF THE JUDGMENT DATED 30/09/2023 IN WPC 31287/2023 OF THE HONORABLE HIGH COURT OF KERALA
- Exhibit P8 TRUE COPY OF THE PROCEEDINGS BEARING NO. GM(HR&A)-CO-357 DATED 02/12/2023 OF THE 3RD RESPONDENT
- Exhibit P9 TRUE COPY OF THE ORDER DATED 19.01.2009 BEARING NO. 1(2) 17573/OS OF THE STATE LABOUR COMMISSIONER, THIRUVANANTHAPURAM

RESPONDENT'S EXHIBITS

- Exhibit R1 (a) TRUE COPY OF THE NOTICE DATED 19.10.2023 ISSUED BY THE 1ST



W.P.(C) No.1071/2024

: 11 :

RESPONDENT COMPANY TO ALL THE
RECOGNIZED TRADE UNIONS

Exhibit R1 (b) TRUE COPY OF THE JUDGMENT DATED
01.09.2022 OF THIS HON’BLE
COURT IN W.P. (C) NO.28343 OF 2022

Exhibit R1 (c) TRUE COPY OF THE JUDGMENT DATED
06.02.2022 OF THIS HON’BLE
COURT IN W.A 1553 OF 2022.