# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO.16553 OF 2024

**Tata Communications Limited**
through its Authorized Representative
having its registered office at VSB
Mahatma Gandhi Road, Fort,
Mumbai – 400 001, and also having
office at - Tata Communications Limited,
Pune-Alandi Road, Dighi,
Pune – 411 015 ....Petitioner

V/S

1 **Union of India**
through the Office of the
Deputy Chief Labour Commissioner,
Ministry of Labour & Employment
4th Floor, Jeevan deep Building,
Parliament Street,
New Delhi – 110 001.

2 **Regional Labour Commissioner (Central) Pune**
1, Kaul Building, Gurunanak Nagar
Sankarseth Road, Pune – 411 002.

3 **Tata Communication Employees Union**
through its General Secretary
Tata Communications Limited
Pune-Alandi Road, Dighi,
Pune 411 015. ....Respondents

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**Mr. Kiran S. Bapat, Senior Advocate** with Mr. Jeevan B. Panda, Ms. Jyoti Sinha, Ms. Dhriti Mehta and Ms. Yashasvi Kanodia i/b M/s. Khaitan & Co. *for the Petitioner.*
**Ms. Shehnaz V. Bharucha** *for Respondent Nos.1 and 2.*
**Mr. Jaiprakash Sawant** *for Respondent No.3.*

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**CORAM: SANDEEP V. MARNE, J.**
**DATE : 12 NOVEMBER 2024.**

**JUDGMENT:**

## A. THE CHALLENGE

**1)** Petitioner has filed this Petition challenging order dated 14 August 2024 passed by the Regional Labour Commissioner (Central), Pune, declaring five office bearers of Respondent No.3-Union as 'protected workmen' for a period of one year under Section 33(4) of the Industrial Disputes Act, 1947 (**ID Act**) read with Rule 61(4) of the Industrial Disputes (Central) Rules, 1957 (**ID (Central) Rules**).

## B. FACTS

**2)** On 1 January 1947 Indian Radio and Telecommunication Company Limited was taken over by the Government of India alongwith its employees. The Government of India created a Department in the Ministry of Telecommunications named as Overseas Communication Service (**OCS**) dealing with communication with Indian subjects with rest of the world. In March 1986, the operations, management, control, assets and liabilities of the OCS were transferred by the Department of Telecommunications, Government of India to a newly incorporated entity by the name Videsh Sanchar Nigam Limited (**VSNL**). Thus, all the employees of OCS were deemed to have been transferred to VSNL and they were treated as on deputation on foreign service to VSNL without any deputation allowance. On 11 December 1989, VSNL issued notice for



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absorption of OCS employees in VSNL with effect from 1 January 1990. In the year 2002, the Government of India sold 25% of its shareholding in VSNL to Panatone Finvest Limited (**Panatone**), a special purpose investment earning of the Tata Group. Panatone subsequently acquired additional 20% shareholding of VSNL from public shareholders. On 28 January 2008, VSNL's name was changed to Tata Communications Limited (**Petitioner**). In March 2021, the Government of India divested its entire equity shareholding of 26.12%, out of which 10% shareholding was purchased by Panatone thereby raising the total shareholding of Tata Group of Companies to 58.87%.

**3)** It appears that two Memoranda of Settlement dated 2 December 2000 and 24 July 2001 were concluded between erstwhile Management of VSNL and Federation of Videsh Sanchar Nigam Employees Union. After VSNL seized to be a public sector undertaking, the said settlements dated 2 December 2000 and 24 July 2001 were continued to be implemented by the Petitioner since the same were valid till 31 December 2006. Further Memorandum of Settlement dated 31 January 2008 was entered into between the Management of VSNL and Federation of VSNL Employees Union. In June 2008, Federation of Tata Communications Employees Union **(Federation)** came to be constituted and registered under the provisions of the Trade Unions Act, 1926. According to the Petitioner, the Federation raised various demands on behalf of the workmen of the Petitioner across all offices in India and various Memoranda of Settlements were executed from time to time between the Petitioner and the Federation.



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**4)** It appears that the employees and workmen of the Petitioner posted at regional levels at Delhi, Mumbai, Chennai etc. formed their separate unions which were affiliated to the Federation. Accordingly, it appears that Tata Communication Employees Union (**Respondent No. 3-Union**) came to be formed and registered as a registered Trade Union in respect of Petitioner-Establishment at Pune. However, according to the Petitioner, even after registration of Respondent No.3-Union, all negotiations and settlements were always executed with the Federation to which Respondent No.3-Union continues to remain affiliated. According to the Petitioner, it has recognized only the Federation and not any regional unions (including Respondent No.3) for the purpose of negotiations.

**5)** In the above background, the Federation sent email dated 26 July 2019 to the Petitioner communicating names of four office bearers of the Federation for being recognized as 'protected workmen' under provisions of Section 33 of the ID Act. Out of the said four names, Petitioner granted recognition to Mr. Arun B. Gamre and Mr. A.T. Gadhave by email/letter dated 7 August 2019. Since two other employees were facing disciplinary action, they were not granted recognition as protected workmen.

**6)** On 27 February 2020, Respondent No.3-Union sent names of five office bearers for being recognized as protected workmen for financial year 2020-21. It appears that the regional Union at Delhi, Chennai, Kolkata and Mumbai also issued similar requests for recognizing its regional union office bearers for being recognized as protected workmen. Petitioner rejected the request of Respondent No.3-Union by email dated



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13 March 2020 stating that the Management had already given recognition to two workmen suggested by the Federation and the Federation was requested to share few more names on its behalf for recognition of total five non-executives as protected workmen. It appears that the Federation protested against Petitioner's response not granting recognition to office bearers of regional Unions stating that only major issue at all India level would be handled by the Federations and accordingly suggested names of five office bearers of the Federation for being recognized as protected workmen. It appears that by email dated 5 June 2020, Petitioner recognized five suggested names by the Federation as 'protected workmen'.

**7)** In the above background, Respondent No.3-Union filed Petition before Deputy Chief Labour Commissioner, Pune seeking declaration of names of five workmen as 'protected workmen'. Petitioner filed Reply dated 15 January 2023 opposing the Petition. The Assistant Labour Commissioner however closed the Petition by his notings dated 5 October 2023 granting liberty to the Union to adopt appropriate legal proceedings. Respondent No.3-Union thereafter filed fresh Petition dated 11 December 2023 for declaration of named five employees therein as 'protected workmen'. The Petition was opposed by the Petitioner by filing Reply dated 5 March 2024. The Regional Labour Commissioner (Central) Pune has allowed the Petition filed by Respondent No.3-Union by order dated 14 August 2024 and has declared the five named office bearers of Respondent No.3-Union as 'protected workmen' for a period of one year from the date of the order in ROW/Maharashtra Region consisting of Pune, Nashik, Nagpur, Gujarat, Solapur of establishment of the Petitioner under provisions of Section 33(4) of the ID Act read with Rule



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61(4) of the ID (Central) Rules. Petitioner is aggrieved by the order dated 14 August 2024 and has filed the present Petition.

## C. SUBMISSIONS

**8)** Mr. Bapat, the learned senior advocate appearing for Petitioner would submit that the Regional Labour Commissioner has palpably erred in entertaining and deciding application dated 25 April 2024 made by Respondent No.3-Union when in fact the reference made to him was in respect of the application dated 13 December 2023. He would therefore submit that the impugned order suffers from jurisdictional error of deciding something, which was never a subject matter of reference under provisions of Rule 61(4) of the ID (Central) Rules. Mr. Bapat would further submit that Section 33 of the ID Act read with Rule 61 of the ID (Central) Rules contemplate recognition of office bearers of only recognized unions as protected workmen. That Respondent No.3-Union, being a regional/local level union, has not been recognized by the Petitioner for any purposes. That the Federation is the only recognized Union, which is also a registered trade union for the purpose of holding negotiations and entering into settlement with the Petitioner. That therefore only office bearers of the Federation are entitled to be recognized as protected workmen under Section 33 of the ID Act read with Rule 61 of the ID (Central) Rules. That Petitioner has never negotiated with Respondent No.3-Union nor has entered into even a single settlement with it. He would submit that the whole objective behind granting special protection to office bearers of the registered trade union is to ensure that they do not face victimization at the hands of the employer only on account of negotiating the demands of workmen.



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That since no office bearer of Respondent No.3-Union holds any negotiations with Petitioner, there is no question of their victimization.

**9)** Mr. Bapat would further submit that the Regional Labour Commissioner was grossly erred in accepting the application of Respondent No.3-Union dated 25 April 2024 on solitary ground of failure on the part of Petitioner to respond thereto within a period of 15 days. That there is nothing in law like deemed recognition on expiry of period of 15 days. In support of his contention, he relies on judgments of Karnataka High Court in ***Canara Workshops, Ltd. Mangalore vs. Additional Industrial Tribunal, Bangalore, and another***[1]***, Bharat Fritz Werner Ltd. rep. by its President & CEO vs. Assistant Labour Commissioner and another***[2] and of the Supreme Court in ***P.H. Kalyani vs. Air France, Calcutta***[3]. He also relies on judgment of this Court in ***AIR India Ltd. vs. Indian Pilots Guild and another***[4] in support of his contention that the Union, through which workmen claim protected workmen status, must be recognized. Mr. Bapat relies on judgment of Delhi High Court in ***Rodhee vs. Govt. of Delhi and others***[5] in support of his contention that in each branch of establishment, minimum of five and maximum of 100 employees can be granted protected workmen status. Mr. Bapat also relies on judgment of this Court in ***Pune District Central Co-operative Bank, Ltd. vs. Bank Karmachari Sangh and another***[6] in support of his contention that status of 'protected workmen' cannot be conferred in respect of each

1 1985 SCC OnLine Kar 133
2 *2011 SCC OnLine Kar 4502*
3 1963 SCC OnLine SC 105
4 (2005) Mah LJ 850
5 2002 SCC OnLine Del 1631
6 2002(1) LLN 820



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unit/branch of employer's business. Mr. Bapat would pray for setting aside the impugned order passed by the Regional Labour Commissioner.

**10)** The Petition is opposed by Mr. Sawant, the learned counsel appearing for Respondent No.3-Union. He would submit that there is no requirement under the provisions of ID Act or ID (Central) Rules that the Union, whose office bearers are sought to be registered as 'protected workmen', must be recognized by the employer. That provisions of Section 33 of the ID Act require mere status as registered trade union. That since Respondent No.3-Union is a registered trade union, it is entitled to seek conferment of status of 'protected workmen' to minimum of its five office bearers working at Pune establishment. He would contest the claim of Mr. Bapat about non-holding of negotiations or non-execution of settlement with Respondent No.3-Union and would submit that several negotiations have been held and settlements have been executed in favour of Respondent No.3-Union by the Petitioner in his past. Mr. Sawant would submit that since the order passed by the Regional Labour Commissioner does not suffer from any patent error, no case is made out for interference in the impugned order. He would pray for dismissal of the Petition.

## D. REASONS AND ANALYSIS

**11)** After having considered the submissions canvassed by the learned counsel appearing for parties, following broad issues arise for consideration:

> 1) Whether the Union, whose office bearers seek status of 'protected workmen', is required to be recognized by the employer?



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2) Whether provisions of ID Act read with ID (Central) Rules contemplate conferment of status of 'protected workmen' on office bearers of only Federation of different Unions or such status can be conferred on office bearers of different constituent unions of the Federation registered for each establishment of the employer?

3) Whether positive action of employer of recognition is a *sine qua non* for an office bearer of a Trade Union to claim status of ‘protected workmen’?

4) Whether the order passed by the Regional Labour Commissioner adjudicating application dated 25 April 2024 is sustainable when the reference was made to him in respect of application dated 23 December 2023?

**D. 1** **ISSUE NO. 1:** Whether the union, whose office bearers seek status of ‘Protected Workmen’, is required to be recognised by the Employer?

**12)** Mr. Bapat has strenuously contended that unless the Union/Federation is recognized by the establishment for the purpose of negotiations and settlements, its office bearers cannot be conferred the status of ‘protected workmen’ under provisions of Section 33(4) of the ID Act. He has contended that since only Federation is recognized by the Petitioner, the office bearers of Federation alone can be considered for conferment of status of ‘protected workmen’. In short, the contention of the Petitioner is that recognition of the Union is a *sine qua non* for consideration of names of its office bearers for conferment of status as ‘protected workmen’.

**13)** To decide the first issue, it would be necessary to consider the provisions of Section 33 of the ID Act, which provide for a prohibition on



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changing the conditions of service during pendency of proceedings. Section 33 of the ID Act provides thus:

> **33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings:—**
> (1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—
>
> (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
>
> (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.
>
> (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute or, where there are no such standing order, in accordance with the terms of the contract, whether express or implied, between him and the workman—
>
> (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or
>
> (b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:
>
> Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.
>
> (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.



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> ***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.**
>
> (5) Where an employer makes an application to a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal under the proviso to subsection (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application, such order in relation thereto as it deems fit :
>
> Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit:
>
> Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.
>
> *(emphasis added)*

**14)** Thus, under sub-section 3 of Section 33 of the ID Act, a special protection is made available to a 'protected workman' from altering his conditions of service or discharging or punishing him without express permission in writing of the Authority before whom the proceedings are pending. The explanation to sub-section (3) of the Section 33 defines the term 'protected workman' to mean a workmen, who is office bearer of a registered trade union connected with the establishment and who is recognized as a protected workmen in accordance with the Rules. Sub-



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section (4) of Section 33 deals with the number of workmen who can be recognized as protected workmen for the purposes of sub-section 3. Such number is required to be 1% of the total number of workmen employed in the establishment, subject to minimum of 5 and maximum of 100.

**15)** As observed above, explanation to sub-section 3 of Section 33 provide for recognition of office bearer of a registered trade union as 'protected' workman in accordance with Rules made in that behalf. Accordingly, Rule 61 of the ID (Central) Rules provide for recognition of 'protected workmen' under Section 33 of the ID Act. Rule 61 of the ID (Central) Rules provide thus:

> **Rule 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 30 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 recognized as "protected workmen". Any change in the incumbency of any such officer shall be communicated to the employer by the union within 15 days of such change.
>
> (2) The employer shall subject to S. 33, Sub-sec. (4) recognize such workmen to be protected workmen for the purpose of Sub-sec. (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 recognized 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 S. 33, Sub-sec. (4), the employer shall recognize 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 bear roughly the same proportion to one another as the membership figures 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:



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> 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 manner 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.

**16)** Thus, a registered trade union connected with Industrial establishment can communicate to the employer before $30^{th}$ day of every year, the names of its office bearers for being recognized as 'protected workmen'. Upon receipt of such intimation, the employer is required to grant such recognition for the purposes of Section 33(4) of the ID Act by issuing a communication to the Union in writing within a period of 15 days. Such recognition remains valid for a period of 12 months from the date of communication. While granting such recognition, the employer needs to have regard to the minimum or maximum number of protected workmen as provided for in Section 33(4) of the ID Act.

**17)** Under Proviso to sub-rule (3) of Rule 61 of the ID (Central) Rules, when there are more than one registered trade unions in an establishment, the maximum number of protected workmen are required to be distributed by the employer amongst the unions in proportion to the membership figures of each union. Under sub-rule (4) of Rule 61, where a dispute arises between an employer and a registered trade union with regard to any matter connected with recognition of protected workmen, such dispute is required to be referred to the Regional Labour



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Commissioner (Central) or the Assistant Labour Commissioner (Central), whose decision on such dispute becomes final.

**18)** Thus, under the provisions of Section 33 of ID Act or Rule 61 of ID (Central) Rules, the only requirement for conferment of status of protected workmen on office bearer of a Trade Union is that such union must be a 'registered trade union'. There is no concept under the provisions of the Act or the Rules which requires or empowers the employer to choose one out of the several registered trade unions as ‘recognized union’ for the purpose of conferment of status of protected workmen on its office bearers. In fact, under proviso to Rule 61(3), the employer is required to distribute the number of workmen while conferring status of protected workmen in the proportion of their membership figures. Thus, the employer is not supposed to choose one out of the several registered trade unions and treat it as a ‘recognized trade union’ by denying the status of ‘protected workmen’ on office bearers of other unrecognized, but registered trade unions. The law mandates that the employer must distribute the number of workmen for conferment of status of protected workmen amongst all registered trade unions in proportion of their membership. Therefore, the contention of Mr. Bapat that since Respondent No.3-Union is not ‘recognized’ by Petitioner for the purpose of negotiations and settlements, its office bearers cannot be conferred status of protected workmen. deserves to be repelled.

**19)** In fact, the judgment of this Court in ***AIR India Limited*** (supra) relied upon by Mr. Bapat recognizes the above position in law by holding that grant of status of protected workmen is not dependent on whether



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the management has recognized the union or not. This Court has held in paragraph 21 of the judgment as under:

> **21.** In the instant case, the respondent No. 1 had made a specific application that two of its members should be granted the status of protected workmen. The employer in turn by way of its reply which has been treated to be the written statement had merely raised objections which have been noted earlier and which may be again set out, *viz.*, that there were claims from both Indian Pilots Guild as well as Air India Line Pilots' Association with regard to the representation of pilots working for AIR INDIA. That it is not the practice of the management to grant the status of protected workmen to the office-bearers of an unrecognized union in Air India. The Indian Pilots Guild was a de-recognized union and as such the status of protected workmen could not be granted to office-bearers of Indian Pilots Guild. In so far as this contention is concerned for the purpose of recognition, as held earlier neither rule 61 nor S. 33 requires that it is only recognized union in an establishment which is required to be protected. The language used in S. 33 is an application by a registered trade union. **In other words all that is required is that the union must be registered. Admittedly in the instant case the union is registered. The objection therefore by the petitioners herein that they do not give recognition of protection to members of unrecognized union would be clearly contrary to the purport and intent of the Act and the rules made thereunder. The Act makes no distinction, between recognized and unrecognized union. The grant of status of protected workmen is not dependent whether a management has recognized a union or not in the absence of any specific provision in the Act and the Rules. On the contrary the recognition is to a registered union. The section must be read in the spirit in which it has been enacted.** The section recognizes that in an industry there is possibility of several unions, some of which may be recognized, some may be unrecognized for reasons or known.
>
> *(emphasis added)*

**20)** Mr. Bapat has sought to rely upon interim order passed by the Single Judge of the Madras High Court in ***Tata Communications Limited vs. Union of India and others*** (Writ Petition No.9937 of 2022) dated 20 April 2022, in which following submissions are recorded while granting interim order of stay:

> 2. The learned Senior Counsel for the petitioner submits that the petition filed by the 3rd respondent was rendered *exfacie* not maintainable and therefore, the 2nd respondent has no jurisdiction to pass the impugned order. The learned Senior Counsel for the petitioner further submits that as per Rule 61(4) of the Central Rules, only the Registered Trade Union, connected with



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> the industrial establishment, shall communicate with the employer and whereas the 2nd respondent has erroneously interpreted Rule 61(4) of the Central Rules and **considered the application of the 3rd respondent, who is not the bargaining entity connected with the industrial establishment** and therefore, the order of the second respondent is under challenge in the present writ petition. Further, he has relied upon the interim order passed by the Delhi High Court in a similar issue in W.P. (C) No.3743 of 2022 dated 08.03.2022 and therefore, he seeks for an order of interim stay.
>
> *(emphasis and underlining added)*

**21)** Apart from the fact the order dated 20 April 2022 is an interim order passed by Single Judge of Madras High Court, which does not bind this Court, I do not find any requirement in law that the Union seeking conferment of status of protected workmen on its office bearers needs to be a 'bargaining entity' connected with the Industrial establishment. Therefore, the interim order dated 20 April 2022 passed by Madras High Court does not assist the case of the Petitioner.

**22)** Mr. Bapat has relied upon judgment of Delhi High Court in ***Rodhee*** (supra) in support of his contention that the Union, through which workmen claim status of protected workmen, must be recognized by the establishment. However the said judgment nowhere provides that unless the Union is recognized by the employer, its office bearer cannot be conferred the status of protected employee. As observed above, this Court in ***AIR India Limited*** (supra) has already held that the act does not make any distinction between recognition and unrecognition and that grant of status of protected workmen does not depend on recognition of Union by the Management.

**23)** Therefore, the first issue about requirement of recognition of Union by the establishment for the purpose of conferment of status of 'protected workmen' on its office bearers is answered against the



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Petitioner. I accordingly proceed to hold that since Respondent No.3-Union is a registered trade union, it need not receive recognition from Petitioner for the purpose of conferment of status of 'protected workmen' on its office bearers.

**D. 2** **<u>ISSUE NO. 2</u>:** Whether provisions of ID Act read with ID (Central) Rules contemplate conferment of status of 'protected workmen' on office bearers of only Federation of different Unions or such status can be conferred on office bearers of different constituent unions of the Federation registered for each establishment of the employer?

**24)** Petitioner has contended that since Federation of different regional Unions has been formed, which is the real bargaining entity in respect of workmen of the Petitioner, the office bearers of Federation alone can be conferred status of 'protected workmen' under Section 33 of the ID Act. In other words, it is sought to be contended that office bearers of regional/local Trade Unions cannot be conferred status of protected workmen. However as observed above, there is no prohibition either under provisions of Section 33 of the ID Act or Rule 61 of the ID (Central) Rules for conferment of status of protected workmen on office bearers of multiple Unions in an establishment. Thus, within one establishment, it is permissible to confer status of protected workmen on multiple Trade Unions. Petitioner is an employer who has multiple establishments at Pune, Mumbai, Kolkata, Chennai etc. Thus, even in Petitioner's establishment at Pune if there were multiple registered Trade Unions, it is permissible to confer status of protected workmen on office bearers of such multiple Trade Unions. Therefore, I do not see any reason why a registered Trade Union in respect of Petitioner's establishment at Pune cannot have its office bearers being recognized as



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protected workmen merely because the regional Unions have formed the Federation, who also is entitled to nominate its office bearers as protected workmen. The Federation is formed only for the purpose of negotiating conditions of services at all India level. This does not mean that the constituent registered Trade Unions of such Federation would lose their status within the meaning of ID Act, especially for the purpose of conferment of status of its office bearers as protected workmen.

**25)** Mr. Bapat has relied upon judgment of this Court in ***Pune District Central Co-operative Bank*** **Ltd.** (supra) in support of his contention that it is impermissible to grant recognition to office bearers of local branches of Union. In ***Pune District Central Co-operative Bank*** **Ltd.** (supra) the issue before this Court was whether protected employees must be taken as a proportion of all employees in the Industry in respect of which Union is a representative or as a proportion of employees in each branch. This Court held that when there is a designated Union in existence, the total number of protected employees must be as a whole subject to maximum and minimum provided under sub-section 2 (b) of section 101 of the Bombay Industrial Relations Act. This Court rejected the contention of the Union that it was entitled to designate minimum of 5 and maximum of 100 employees as protected employees in every branch of the Bank. This Court held in paragraph 19 as under:

> **19.** Having regard, therefore, to the circumstances, I am of the view that in cases such as the present, when there is a representative union in existence in any specific local areas, the total number of protected employees must be construed as one per cent of the total number of employees engaged in the industry as a whole subject to the minimum and the maximum provided by Sub-sec. (2B) of S. 101. In other words, it would be impermissible to allow the computation to be made with



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> reference to each branch of each co-operative bank. The contention of the learned counsel for the Union that the Union is entitled to designate a minimum of five and a maximum of one hundred employees as protected employees in every branch of a co-operative bank is therefore, rejected.

**26)** Thus, the issue before this Court in ***Pune District Central Co-operative Bank*** **Ltd.** (supra) was altogether different. The Union therein contended that it was entitled to designate minimum of 5 and maximum of 100 employees in each branch for conferment of status of protected workmen. This Court held that the Union therein represented employees of the entire Bank and that therefore the number of protected employees must be construed as 1% of total number of employees engaged in the Bank as whole. The judgment in ***Pune District Central Co-operative Bank*** **Ltd.** (supra) therefore cannot be read in support of a proposition that when an employer maintains different establishments, the minimum and maximum number of employees to be nominated as protected employees must be with reference to all employees of the Petitioner across India.

**27)** In my view, it therefore cannot be contended that Respondent No.3-Union, which is a registered Trade Union in relation to establishment of Petitioner at Pune is prohibited from nominating its office bearers for conferment of status of protected employees. Mere existence of Federation does not nullify the right of individual registered Trade Union in respect of a particular establishment from having its office bearers treated as protected employees. The second issue is answered accordingly.



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**D. 3** **<u>ISSUE NO. 3</u>:** Whether positive action of recognition by employer is a *sine qua non* for an office bearer of a Trade Union to claim status of Protected Workmen?

**28)** Mr. Bapat has contended that mere nomination of names of five office bearers by Respondent No.3-Union coupled with failure on the part of Petitioner to respond to the application did not confer automatic recognition to the said five office bearers the status of the protected workmen. In support of his contention, he has relied upon judgment of Karnataka High Court in ***Canara Workshops Ltd. Mangalore*** (supra) which in turn has relied upon judgment of the Apex Court in ***P.H. Kalyani*** (supra) and has held in paragraphs 8, 9 and 12 (iii) and (iv) as under:

> **8.** Learned Counsel for the petitioner contended that a positive action of recognition on the part of the management was a must and without that no workman can claim the status of a protected workman. In support of this submission, Learned Counsel relied on the judgment of the Supreme Court in *P**.H. Kalyani*** **v.** ***AIR France*** [AIR 1963 SC 1756.] . The relevant portion of the judgment reads-
>
>> "(5) Learned Counsel for the appellant has further raised same points which were raised on behalf of the appellant before the Labour Court. In the first place, he contends that the appellant was a protected workman and the Labour Court was not right when it held that the appellant was not a protected workman. We are of opinion that the question whether a particular workman is a protected workman or not is a question of fact, and the finding of the Labour Court on such a question will generally be accepted by this Court as conclusive. Besides, the Labour Court has pointed out that the mere fact that a letter was written to the Manager of the Respondent company by the Vice-President of the union in which the name of the appellant was mentioned as a joint Secretary of the union and the manager had been requested to recognise him along with others mentioned in the letter as protected workmen would not be enough. The company had replied to that letter pointing out certain legal defects therein and there was no evidence to show what happened thereafter. <u>The Labour Court has held that according to the Rules framed by the Government of West Bengal as to the recognition of protected workmen there must be some positive action on the part of the employer in regard to the recognition of an employee as a protected workmen before he could claim to be a protected workmen for the purpose of Section 33. Nothing has been shown to us against this view.</u> In the absence therefore of any evidence



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> as to recognition, the Labour Court rightly held that the appellant was not a protected workman and therefore previous permission under Section 33(3) of the Act would not be necessary before his dismissal."
>
> [Emphasis supplied.]

The above decision was rendered by the Supreme Court interpreting a corresponding rule of the rules framed by the State of West Bengal under the provisions of the Act. It was Rule 61 of the West Bengal Rules. A comparison of the West Bengal Rules and Rule 62 of the Rules shows that both the rules are similarly worded except to the extent of an additional requirement imposed under the West Bengal Rules. The only difference between the two, is while Rule 62(2) of the Rules requires the employer to send a communication regarding the recognition of the workmen as protected workmen to the trade union concerned, the West Bengal Rules requires the employer to send the communication also to the Labour Commissioner and the Conciliation Officer concerned. In other respects, there is no difference at all.

**9. The clear pronouncement of the Supreme Court in the *Kalyani's case* extracted above, is that a positive action of recognition by the employer is necessary in order that an office bearer of a trade union secures the status of a protected workman.**

**12.** (i) ….
(ii) ….
(iii) If the intention of the rule making authority was that if within fifteen days after the receipt of the letter from the trade union seeking recognition as protected workmen to its office bearers the management fails to send a reply, the workmen whose names are mentioned in the communication shall be deemed to be protected workmen, the rule would have been appropriately worded. In the absence of any such provision, it is impermissible to hold that just because a communication had been sent under Rule 62(1) and there had been no reply from the employer within fifteen days, the persons whose names are found in the communication sent under Rule 62(1) becomes protected workmen.

(iv) **Therefore in cases where no reply is received from the management accepting the list of protected workmen within fifteen days, unless the trade union chooses to approach the management and secure recognition, the only course open to the trade union is to secure recognition through an order of the Conciliation Officer.** Learned Counsel for the 2nd Respondent submitted that if such a view is taken, the workmen would be deprived of the status of protection till the date of the order of the Conciliation Officer. This submission is also not tenable. The recognition whether through a written communication from the employer sent under Rule 62(2) or through an order of the Conciliation Officer would be, irrespective of the date of communication or the date of the order, effective for the whole year, as the rule provides for recognition of protected workmen for an year i.e. an year commencing from 1st May of an year ending 30th April of the next year, and not from the date of communication by the management or the order. It is only in cases where the trade union sends a belated



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> communication, i.e., after 30th April, the recognition Would be effective from the date of communication and holds good for the balance of the period of the year concerned.

**29)** Mr. Bapat has also relied upon judgment of Karnataka High Court in ***Bharat Fritz Werner Ltd.*** (supra) in which the Division Bench has again relied upon judgment of the Apex Court in ***P.H. Kalyani*** (supra) and has held in paragraph 13 as under:

> **13.** So, even as could be seen from the principles laid down by the Apex Court, a positive action on the part of the employer is necessary recognising an employee as a 'Protected Workmen'. Here, in the case on hand, it is relevant to note that there is no positive action on the part of the employer which led to the dispute and it is the first respondent who took a decision refusing the recognition of the aforesaid two workmen as 'Protected Workmen". So as stated above, when a person is facing criminal charges, the law would not come to the help of such persons to protect them so as to defeat the very purpose of the legislation.

**30)** Even in ***AIR India Limited*** (supra) this Court has rejected the contention of deemed grant of status of protected workmen on failure of the management to communicate decision to the Union within 15 days. This Court held in paragraph 20 as under:

> 20. To answer the question whether on failure there is a deemed recognition it must be borne in mind that deemed recognition can only be there if there is a specific provision in the Act or if otherwise on a reading of the provisions it can be implied that there is deemed recognition. Section 33(4) does not so provide. Under the Rules what is set out is that the union must intimate to the employer, which of the workmen are to be conferred the status of protected workmen, and the employer then, within 15 days of the receipt of the letter, should communicate to the union the list of workmen recognized, to be protected workmen. A reading of the Rule, in my opinion, does not lead to the inference that there is a deeming provision by which workmen can be treated as duly protected merely on the failure by the employer to communicate its decision to the union. Secondly if the Act itself has not so provided then a subordinate legislation cannot so provide. Apart from that power has been conferred on an authority to decide the dispute. The dispute is not only a positive act on the part of the management to grant recognition but will also include a failure to communicate their decision or no decision itself. In the instant case the subordinate legislation does not so provide but the Rule has been so construed by the Gujarat and Delhi High Courts. The view that there



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> is no deemed protection is fortified by the view taken by the Apex Court in *Kalyani case* (vide supra). What was under consideration in that case was whether the Rules framed by the Government of West Bengal as to the recognition of protected workmen which Rules are similar in all respect, except to the extent of intimating the decision to the Government. Considering the Rules the Apex Court upheld the view of the Labour Court that there is no deeming fiction though in that case the company had replied to the letter pointing out certain legal defects therein. One of the requirement of deeming fiction is that the application must be complete in all respects. As noted earlier there must be a specific provision in law. There is nothing mentioned in S. 33(4). The Rules do not expressly or impliedly provide so and in my opinion therefore the second respondent has clearly committed an error of law which is apparent on the face of the record in holding that on failure by the employer to communicate within 15 days the workmen would be entitled to protection. A learned Judge of the Karnataka High Court in *Canara Workshops* (vide supra), after considering the judgment in *P.H. Kalyani* (vide supra), has taken a view that there must be positive action on the part of the management. The word dispute in rule 61(4) must be read to include a case also of failure to communicate a decision or non-decision itself. The expression dispute cannot be limited only to those cases where the management has rejected the application on some ground or on no ground but also where there is failure to communicate the decision.

**31)** Thus, the law appears to be fairly well settled that in the event of failure on the part of the management to communicate decision on application within 15 days, there is no deemed recognition as protected employees. However, in paragraph 20 of the judgment in ***AIR India Ltd.*** (supra), this Court has held that the word 'dispute' in Rule 61 (4) of the ID (Central) Rules must be read to include a case of failure to communicate the decision or non-decision itself. This Court further held that the expression 'dispute' cannot be limited to only those cases where the management has rejected the application and that the same would include a case where there is failure to communicate the decision.

**32)** The conspectus of the above discussion is that while there is no concept of deemed conferment of status of protected workmen upon failure on the part of management to communicate decision within a



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period of 15 days of receipt of application, failure on the part of the management to give such response enables the Union to make a reference to the Regional Labour Commissioner under Rule 61 (4) of the ID (Central) Rules. In the present case, the Petitioner admittedly did not respond to application of Respondent No.3-Union dated 25 April 2024 within a period of 15 days and therefore Respondent No.3-Union was entitled to make a reference to Regional Labour Commissioner under provisions of Rule 61(4) of the ID (Central) Rules. The third issue is answered accordingly.

**D. 4** **ISSUE NO. 4:** Whether the order passed by the Regional Labour Commissioner adjudicating application dated 25 April 2024 is sustainable when the Reference was made to him in respect of application dated 23 December 2023?

**33)** Mr. Bapat has strenuously contended that the impugned order dated 14 August 2024 is liable to be set aside on account of adjudication of application dated 25 April 2024, which was not a subject matter of reference to the Regional Labour Commissioner under provisions of Rule 61(4) of the ID (Central) Rules. It appears that after narrating the facts of the case, the Regional Labour Commissioner formulated the Issue No.1 as under:

> "1. Whether the application made Tata Communication Employees Union, Pune dated 13.12.2023 in terms of Section 33(4) of the I. D. Act, 1947 to declare 5 office bearers of the Union as "Protected Workmen" is legal and justified? If yes, what relief?"

**34)** Thus, the issue taken up for consideration by the Regional Labour Commissioner was whether application dated 13 December 2023 made by Respondent No.3-Union for declaration of its five office bearers as 'protected workmen' was legal and justified.



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**35)** As observed above, Respondent No.3-Union had initially made application dated 27 February 2020 to the Petitioner suggesting names of its five office bearers of Pune Union for being recognized as protected workmen. Since the said request was rejected by letter dated 13 March 2020, Respondent No.3-Union filed Petition before the Regional Labour Commissioner on 20 August 2020. It appears that the Assistant Labour Commissioner, Pune, conducted conciliation with the Petitioner and took note of the position that Petitioner operates five establishments across India and there is a Federation to represent employees of all the five establishments. The Respondent No.3-Union on the contrary contended that it is a registered Trade Union and that all the five Regional Employees Unions had filed applications for conferment of status of protected employees. It was noted that the Regional Labour Commissioner, Chennai had ruled in favour of the Regional Registered Trade Union, whose order was subject matter of challenge before Madras High Court. The Assistant Labour Commissioner noted that the Regional Labour Commissioner, Mumbai had put on hold the proceedings before him and therefore proceeded to close the conciliation proceedings. This is how the application made by Respondent No.3-Union in 2020 did not yield any positive outcome. Three years later, Respondent No.3-Union filed a fresh Petition before the Regional Labour Commissioner suggesting the names of five office bearers for conferment of status of 'protected workmen' complaining that the Respondent-Management was granting status of protected workmen only to the office bearers of the Federation. The Petition filed by the Respondent No.3-Union on 11 December 2023 was opposed by the Petitioner by filing Reply dated 5 September 2024. The Regional Labour Commissioner however took note of the fact that the period of recognition as protected



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workmen was only for one year and every year the Union needs to submit list of its office bearers. He accordingly took cognizance of application dated 25 April 2024 filed by Respondent No.3-Union and proceeded to adjudicate the same.

**36)** Since the Regional Labour Commissioner proceeded to adjudicate subsequently filed application dated 25 April 2024, Petitioner is seeking to challenge the jurisdiction as well as proprietary of the Regional Labour Commissioner in passing the impugned order. While in ordinary circumstances the Petitioner may be right in contending that a fresh reference was required to be made in pursuance of application dated 25 April 2024 under provisions of Rule 61(4) of the ID (Central) Rules. However, in the present case, the Regional Labour Commissioner was already seized of the issue of conferment of status of protected workmen on office bearers of Respondent No.3-Union. As a matter of fact, the Petition dated 13 December 2023 was apparently not supported by any underlying application required under provisions of Rule 61(1) of the ID (Central) Rules. The prescribed procedure under Rule 61 of the ID (Central) Rules contemplates making of an application by the registered Trade Union to the employer before 30 April of every year and the employer communicating decision thereof within 15 days. As observed above, even failure on the part of the employer to give response to such application results in 'dispute' within the meaning of Rule 61(4) of the ID (Central) Rules and in such event, the said dispute can be adjudicated by the Regional Labour Commissioner under Rule 61(4) of the ID (Central) Rules. It appears that the Petition dated 13 December 2023 was directly made by Respondent No.3-Union to the Regional Labour Commissioner without first addressing an application under Rule 61(1) of the ID



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(Central) Rules to the employer. However, during pendency of that Petition, Respondent No.3-Union corrected its action and filed application dated 25 April 2024 to the employer. The said application dated 25 April 2024 was perfectly within the requirement of Rule 61(1) of the ID (Central) Rules. Since Petitioner-Management failed to respond to the said application dated 25 April 2024, a dispute got created for the purpose of being adjudicated by the Regional Labour Commissioner under Rule 61(4) of the ID (Central) Rules. In that view of the matter, it cannot be stated that no dispute existed *qua* application dated 25 April 2024 for being adjudicated by the Regional Labour Commissioner. On account of failure on the part of Petitioner-Management to decide the application dated 25 April 2024 within a period of 15 days, though there is no deemed conferment of status of protected workmen, a dispute definitely got created within the meaning of Rule 61(4) of the ID (Central) Rules and such dispute has rightly been adjudicated by the Regional Labour Commissioner. I therefore do not find any jurisdictional error being committed by the Regional Labour Commissioner in entertaining and deciding the dispute arising out of application dated 25 April 2024.

**37)** The matter can be viewed from another angle as well. No possible prejudice is caused to the Petitioner on account of the decision of dispute arising out of application dated 25 April 2024. Though Mr. Bapat has sought to contend that the Regional Labour Commissioner has virtually granted deemed recognition to five named office bearers merely on account of failure on the part of the Petitioner to respond the application within a period of 15 days, I am unable to agree with the said contention. As observed above, the correct reading of the observations made by the



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Regional Labour Commissioner in the impugned order *qua* application dated 25 April 2024 is that a dispute arose on account of failure on the part of Petitioner-Management to decide the application dated 25 April 2024 within a period of 15 days and the said dispute has been adjudicated by the Regional Labour Commissioner. It is not the case of the Petitioner that any of the five office bearers of the Respondent No.3-Union face any disqualification/disability for grant of status as protected workmen. It is also not the case of Petitioner that what it operates at Pune is not an 'establishment' within the meaning of Section 2 (ka) of the ID Act. Mr. Bapat in fact fairly admits that Petitioner operates an establishment at Pune. Therefore, in respect of establishment of the Petitioner at Pune, minimum of five persons are required to be granted status as protected workmen. The Federation itself has clarified that it only negotiates issues on national level and it is Mr. Sawant's case that the local issues are agitated by the Respondent No. 3 Union. All that will happen by the impugned order is that the office bearers of the local union (Respondent No. 3) shall also enjoy the protection under Section 33 of the ID Act.

**38)** Therefore, there is no error on the part of the Regional Labour Commissioner in conferment of such status on five office bearers of Respondent No.3-Union. So far as the contention of Mr. Bapat about some of the office bearers of the Federation being already recognized as protected workmen is concerned, the same was done by email dated 5 June 2020. There is nothing on record to indicate that for subsequent years, and particularly for the year 2024-25 any office bearers of the Federation are also recognized as protected workmen. Thus, there is no violation with regard to the specified number of workmen to be conferred



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the status of protected workmen. Therefore, it cannot be stated that the impugned order passed by the Regional Labour Commissioner suffers from any serious error. Therefore, even if the technical objection sought to be raised by Mr. Bapat about decision of application dated 25 April 2024 was to be accepted, the impugned order would still be sustained. However as observed above, even that technical objection raised by the Petitioner is meaningless and deserves to be rejected.

**39)** Mr. Bapat's reliance on interim order of Delhi High Court in ***Tata Telecommunications Limited vs. Union of India and others***[7] does not cut any ice. The said order, again being a mere interim order and has been passed in the light of peculiar circumstances where the concerned office bearer of Delhi Unit was also found to be the Assistant General Secretary of the Federation.

**40)** I therefore find that there is no warrant for interference in the impugned order passed by the Regional Labour Commissioner.

## E. ORDER

**41)** The order passed by the Regional Labour Commissioner is thus unexceptional. Writ Petition is devoid of merits. It is accordingly **dismissed** without any order as to costs.

**(SANDEEP V. MARNE, J.)**

SUDARSHAN RAJALINGAM KATKAM
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7 Order dated 8 March 2022 passed in Writ Petition (C) No. 3743 of 2022



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