

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.15780 of 2015

DATED : 20.08.2015

Between :

AGI Glass Factory (Contract Workers Union),
Regd.No.A-39/2011 (INTUC),
Thokkapur Village, Bhongir Mandal,
Nalgonda District, rep., by its President
Md.Chand Khan S/o.Aziz Khan,
Aged 45 yrs, R/o.Bhongir, Village and Mandal,
Nalgonda District & others.

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Petitioners

and

State of Telangana,
Rep., by its Principal Secretary, Labour & Employment
Department at Secretariat, Hyderabad & others.

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Respondents

This court made the following :

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ORDER :

The 1st petitioner is a Trade Union, 2nd petitioner is the General Secretary, 3rd petitioner is the working President and 4th petitioner is a worker of AGI Glass Factory (4th respondent). It is averred that the petitioner-Union was registered on 09.03.2011 and there are about 950 workers working in the 4th respondent, out of which more than 80% are members of the petitioner Union, in addition to other union operating in the 4th respondent factory. The petitioners allege that the respondents have not conducted elections to determine the majority union under Code of Discipline. All this is done to deprive the legitimate demands of majority of the workers and entered into illegal agreement with the other union. Having regard to the conduct of the respondent Management, on 05.01.2015, the petitioner union conducted General Body Meeting attended by 631 workers and in the said meeting, it was unanimously resolved to conduct secret ballot elections to determine the majority status. A representation was submitted to the 3rd respondent and when the 3rd respondent did not take any steps, the petitioners submitted a representation dated 04.03.2015 to the 2nd respondent. The 2nd respondent vide memo dated 04.04.2015 directed the 3rd respondent to conduct inspection and send a report. In spite of the direction issued by the 2nd respondent, the 3rd respondent has not conducted secret ballot

election and all this was done only to favour the 4th respondent factory. In those circumstances, this writ petition is filed.

2. When the matter is taken up for admission, learned counsel representing the 4th respondent as well as learned Assistant Government Pleader representing respondents 1 to 3 have raised objection on the maintainability of the writ petition by placing reliance on decision of this Court in W.P.No.31577 of 2014 dated 11.11.2014. Learned counsels contended that the relief sought is for enforcement of the provision of Code of Discipline and code of discipline being a non statutory instrument, the writ petition under Article 226 of the Constitution of India is not maintainable, for enforcement of such provision.

3. In reply, learned counsel for the petitioners contend that the relief sought by the petitioners is more in the nature of enforcement of the provisions of the Trade Union Act and the respondent authorities are statutorily bound to act, in accordance with the Trade Union Act and ensure properly constituted Trade Union operations, for the welfare of the labourers and therefore, the writ is maintainable.

4. In W.P.No.31577 of 2014, this Court considered the very same issue. The question for consideration before this Court was whether on the process of determination of a majority Trade Union and according recognition to it, under the Code of Discipline by officials like the Deputy Commissioner of Labour, can a writ petition under Article 226 of the Constitution of India is maintainable?

5. After detailed consideration, the said question was answered by the learned Single Judge, in Para No.37 which reads as under :

“For the above reasons, I am of the opinion that since the order dated 08.10.2014 was passed by the 2nd respondent in his capacity as a returning Officer for the conduct of secret ballot election to determine the majority Trade Union in the 3rd respondent-Industry under the Code of Discipline is as per the “Procedure for Verification of Membership of Unions for the purpose of recognition under the Code of Discipline”, and since the Code of Discipline is non-statutory, a Writ Petition questioning the same is not maintainable. It is open to

the aggrieved parties to approach a Civil Court challenging the same.”

6. All the counsels appearing for respective parties have stated that no appeal is filed and decision has become final.

7. Having regard to the principle laid down by this Court in the above decision and since the petitioners are also seeking enforcement of the provisions of Code of Discipline, a non-statutory provision, the Writ is not maintainable and is liable to be dismissed.

8. Accordingly, the Writ Petition is dismissed. However, it is left open to the petitioners to work out their remedies as available in law. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

P.NAVEEN RAO,J

20th August, 2015.

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