

● THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

± WRIT PETITION No.19523 OF 2011

% 19th June, 2017.

WRIT PETITION No.19523 OF 2011

Electronics Corporation of India Limited,
Employee's Union (Regd. No.3164)
Near ECIL Factory gate, P.O.:ECIL,
Hyderabad-62,
Represented by its General Secretary
N.S.Kumaran, S/o J.T. George, Age:58 years

.. PETITIONER

VS.

\$ The Medical Council of India,
Represented by its Secretary,
Ministry of Labour & Employment,
New Delhi and 3 others

.. RESPONDENTS

! Counsel for the petitioner : Sri Kowturu Pavan Kumar

^ Counsel for the respondents : Sri D.Ravishankar Rao

< Gist:

> Head Note:

? ¹ 1989 LawSuit (Mad) 150

² **2008 (4) ALD 422**

³ 2015 (2) ALD 690 2015 (2) ALD 690

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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O R D E R :

This writ petition is filed seeking to issue a writ of mandamus declaring the action of the respondents in not extending the 'Check Off' facility to the petitioner-trade union as being illegal, arbitrary, discriminatory and violative of principles of natural justice and for issuance of appropriate consequential directions.

2. The case of the petitioner is that it is a trade union which came into existence in the year 1968 espousing the cause of the employees of ECIL. While so, the management of ECIL adopted a 'Check Off' system, whereunder a nominal fixed amount is deducted from the salary of the employees of ECIL towards subscription fee and being transferred to the account of the petitioner trade union. But, in the elections held on 22.01.2011 by the Deputy Commissioner of Labour, the ECIL's Staff & Workers Union, bearing Regn.No.A-3529 secured majority votes and was recognized as the representative union of the employees of ECIL and the said recognition was granted for a period of two years. After the elections, the Head of Personnel Group of ECIL

issued the impugned proceedings bearing Ref.No.ECIL:PG:ER:2011, dated 08.02.2011 to the effect that 'Check-Off' system will be provided only to recognized trade union and the subscription deducted towards the membership of the trade union be credited to the recognized trade union by discontinuing the subscription to the petitioner-trade union from the month of February, 2011. Hence, this writ petition.

3. Counter affidavit is filed by the 3rd and 4th respondents stating that the respondent-Company, as a matter of policy, is extending certain facilities only to the recognized trade union, as per Code of Discipline, which is arrived at between Trade Union leaders at International Labour Organization Conventions. It is also stated that in the elections held on 22.01.2011, the ECIL Staff and Workers Union has secured majority votes and therefore, it is recognized as representative union of workers of respondent-Company under the Code of Discipline and accorded recognition for a period of two years. Earlier, petitioner trade union also enjoyed the benefit of 'Check Off' facility, being the recognized trade union and the said facility was not extended to any other trade union, but only to recognized trade union. It is further stated that respondent in its discretion is providing the

said facility as a goodwill gesture only to a recognized trade union, but not under any compulsion or obligation. In other words, even the recognized trade union cannot claim or demand, as a matter of right, to extend such facility. As such, petitioner is not entitled to make such claim being unrecognized trade union and sought for dismissal of the writ petition.

4. Learned counsel for the petitioner submits that when once the 'Check-Off' facility was given to the recognized trade union, there is no reason to deny the same to the petitioner's union and all the trade unions have to be treated on par and could not have been discriminated. He also submits that the petitioner trade union has been singled out and denied 'Check Off' facility, the same is in violation of equality clause enshrined in Article 14 of the Constitution. He further submits that in fact the decision of extending the 'Check Off' facility to all the registered trade unions was upheld by the Madras High Court in **STATE BANK STAFF UNION, STATE BANK OF INDIA OFFICERS ASSOCIATION Vs. STATE BANK OF INDIA; UNION OF INDIA**¹.

¹ 1989 LawSuit (Mad) 150

5. On the other hand, Sri D.Ravishankar Rao, learned counsel appearing for respondents 3 and 4 submits that 'Check Off' facility is only provided to the recognized trade union as per the Code of Discipline and discretion vests with the respondent-Corporation. He further submits that there is no statutory basis for extending the said facility and as such, no mandamus can be issued for extension of said facility to the petitioner's trade union as well.

6. It is to be seen that there is no statutory rule or provision for extension of 'Check Off' facility to all the trade unions and petitioner trade union is no an exception. The 'Check Off' facility under which certain amounts are deducted towards the subscription of the employees to the trade union, which espouse their welfare and cause is being given to trade union recognized by the respondent-Company i.e., the trade union which is retained by majority employees of the Company by casting their votes in the election conducted. In the absence of any rule much less any statute providing for extending the 'Check Off' facility even to un-recognized trade union, the petitioner trade union cannot seek to credit the said amounts to its account in the light of the fact that facility is extended only to the

recognized union under the terms of Code of Discipline and it is discretion of the respondent-Corporation to extend such facility even to recognized trade union. In **MANAGEMENT OF APSRTC, HYDERABAD vs. WORKMEN OF THE APSRTC, HYDERABAD**², this Court in an identical case observed that the Code of Discipline which provides for recognition of the union, which represents a majority of the workmen in the establishment as the recognized union with whom the management would negotiate, does not have statutory force. Set out below are some of the key paras of the said decision, read as under:-

“14. The Code of Discipline, which was ratified by the Central Employees and 'Workers' Organization at the 16th Session of the Indian Labour Conference held at Nainital in May, 1958, came into force from 01.06.1958. Part V of the Code of Discipline relates to Implementation and Evaluation Machinery and its functions and procedures, wherein the rights arising out of recognition of unions are found. Under para 13 thereof, it was agreed that the Unions, granted recognition under the Code of discipline, would enjoy the right to raise issues and enter into collective agreements with the employers on general questions concerning the terms of employment and conditions of service of workers in an establishment.

15. Appendix-I to the Code of discipline requires the management to recognise the Union in accordance with the criteria provided in Annexure-I to that Appendix, which was evolved at the 16th session of the Indian Labour Conference held in May, 1958. Under clause 4 of Annexure-1 when a union has been recognised, there should be no change in its position for a period of two years. Under clause 5 of the

² 2008 (4) ALD 422

said Annexure, when there are several unions in an industry or establishment, the one with the largest membership should be recognised. Under clause 8, only unions which observe the Code of Discipline would be entitled to recognition. (*I.T.C. Employees Association Vs. State of Karnataka*, 1981 (1) LLJ 431)

16. The Code of discipline which provides for recognition of the Union, which represents a majority of the workmen in the establishment, as the recognized union with whom the management would negotiate, does not have statutory force.”

7. In an un-reported decision of this Court in **HMT EMPLOYEES UNION vs. HMT**, (WP No.3174 of 1967) a question arose for consideration as to whether a writ petition is maintainable under Article 226 of the Constitution to quash a decision of the State Evaluation and Implementation Committee constituted in terms of the Code of Discipline. It was observed by this Court that Code of Discipline being a voluntary agreement between management and workers, rejected the contention of the petitioner therein that the Code of Discipline could be enforced in a proceeding filed under Article 226 of the Constitution. It was held therein as under:-

"I am unable to see how this Court exercising jurisdiction under Article 226 of the Constitution can quash a decision of the State Evaluation and Implementation Committee constituted in pursuance of the Code of Discipline which has no statutory basis but is a voluntary agreement between management and workers I do not think it is competent for me to interpret the clauses of the Code of Discipline and

to give any direction concerning the recognition of rival Trade Unions. The application under Article 226 is misconceived and it is therefore dismissed."

8. In yet another decision rendered on the same lines in **DR. REDDY'S FORMULATIONS TECHOPS-II vs. GOVERNMENT OF TELANGANA**,³ this Court having referred to the decisions in **MANAGEMENT OF APSRTC, HYDERABAD's** case (2 supra) & and un-reported decision of this Court in **HMT EMPLOYEES UNION's case** passed in WP No.3174 of 1967, dated 07-08-1968 and following the *ratio decidendi* laid down therein refused entertain the writ petition on the ground that Code of Discipline has no statutory force and cannot be enforced in a proceeding under Article 226 of the Constitution, leaving it open to the aggrieved parties to approach civil Court.

9. The Division Bench decision of the Madras High Court in **STATE BANK STAFF UNION, STATE BANK OF INDIA OFFICERS ASSOCIATION's case** (1 supra), relied on by the learned counsel for the petitioner is distinguishable as the issue that arose for consideration therein was not to extent the 'Check Off' facility to all the registered unions, but the management has taken a decision to extend 'Check Off' facility

³ 2015 (2) ALD 690

to all the registered unions, and not to the exclusion of the recognized trade union. In the case on hand, the petitioner which is a registered union is seeking to extend 'Check Off' facility to all registered unions by way of issuance of mandamus. As has been held by this Court in the decisions (2 & 3 supra), Code of Discipline being a contract entered into between the workers represented by their unions and the management and the 'Check-Off' facility is nothing but authorization by employee in favour of union, no mandamus can be issued to enforce the same. Existence of legal right is the foundation for enforcing a right through issuance of mandamus. Requirement of issuance of mandamus is that there should be a constitutional right to demand and refusal on the part of the respondent. Petitioner is not able to point out existence of legal right in its favour to provide 'Check-Off' facility. As such question of issuance of mandamus to provide check-off facility to petitioner does not arise. Inasmuch as the Code of Discipline evolved provides for extension of 'Check-Off' facility and such a clause is non statutory in character, same cannot be enforced by issuance of mandamus.

10. In view of the above facts and circumstances, I do not see any merit in the writ petition. Accordingly, the writ petition is dismissed. However, this order will not preclude the respondents for extending the 'Check Off' facility to petitioner trade union, if they are so advised. There shall be no order as to costs. As a sequel, miscellaneous petitions, pending, if any shall stand closed.

Dated: 19.06.2017
DV

A.RAJASHEKER REDDY, J



HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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