

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.7574 of 2018

ORDER:

This writ petition under Article 226 of the Constitution of India, is filed by the petitioner seeking verbatim the following relief:

“..it is hereby prayed that this Hon’ble Court may be pleased to issue any writ, order or direction more particularly in the nature of MANDAMUS declaring the interference of the 2nd respondent in conducting the elections to the office bearers of the petitioner Union as arbitrary, *malafide*, illegal and violative of Article 19(3) of the Constitution of India and direct the 2nd respondent as not to interfere in the affairs of the petitioner Union and permit the petitioner union to conduct elections to its office bearers as decided by its Managing Committee and pass such other order or orders may deem fit and proper in the circumstances of the case.”

2. I have heard the submissions of *Sri T.Koteswara Rao*, learned counsel appearing for the petitioner; of *Sri K.Lakshman*, learned Assistant Solicitor General India appearing for respondents 1 to 3; and, of the learned Government Pleader for Services (TS) appearing for respondent no.4. I have perused the material record.

3. The case of the writ petitioner-Workers Union and the submissions made on its behalf, which are relevant for consideration, in brief, are as follows:

The petitioner-Workers Union is a registered union of the 2nd respondent organization, viz., The Nuclear Fuel Complex of Department of Atomic Energy of Government of India. The union has its own by-laws, which provide for the posts of office bearers and the terms of office of such office bearers. The 1st respondent, the Union of India, granted recognition for a period of five years, from 01.02.2017 to 31.01.2022, to the petitioner-Workers Union as per the rules under the Recognition of Service Association Rules, 1993. The petitioner-Workers Union requested the 2nd respondent to nominate one G.S.V.V.S.N.Murthy, Scientific Officer (E) of the 2nd respondent, as a Convenor

to conduct its bi-annual elections along with three other officers as co-conveners. By letter, dated 02.02.2018, the 2nd respondent conveyed the approval of the competent authority for the appointment of the said convener and co-conveners for holding elections of the petitioner-Workers' Union for the term 2017-2019. The convener issued notification on 08.02.2018 and fixed schedule for conduct of elections on 23.02.2018. The petitioner-Workers' Union, by letter, dated 09.02.2018, forwarded the list of members/ voters for conducting the elections and display of the same on the notice boards. However, the management of the 2nd respondent organization has given another list of voters to the said convener for conducting elections. The Convener has displayed the said list given by the management of the 2nd respondent organization on the notice boards. Aggrieved thereof, the petitioner-Workers' Union addressed letters, dated 10.02.2018 and 14.02.2018 taking strong objection and refused to release the expenditure for conduct of elections as per the voters list forwarded by the management of the 2nd respondent organization and stated that the funds for conduct of elections would be released provided the convener gives written clarification that he will conduct elections as per the voters list forwarded by the petitioner-Workers' Union. The Convener postponed the elections initially and later withdrew from the post of Convener. The election process has come to a standstill. On 19.02.2018, the petitioner-Workers' Union requested the 3rd respondent, the Deputy Chief Labour Commissioner (Central) to provide an Observer for supervision of elections that are to be conducted. The 3rd respondent did not consider the said request as he was said to have been authorised to conduct union elections under the Code of Conduct but not otherwise. The petitioner-Workers' Union, having no alternative, vide letter, dated 21.02.2018, appointed one retired Regional Labour Commissioner (Central) as Convener to conduct elections and sought permission of the 2nd respondent, vide letter dated 23.02.2018, to conduct elections. The management of the 2nd

respondent vide letter, dated 22.02.2018 informed the petitioner-Workers' Union that the participants of the Trade Unions of NFC have made a request that outsiders are not to be engaged for the purpose of conduct of elections and therefore, suggested to bring consensus among all participating unions and intimate further appointment of convener for further examination. The petitioner-Workers' Union, by letter dated 23.02.2018, asserted its right to conduct elections for electing the office bearers independently without interference from the management of the 2nd respondent and questioned the authority of the management of the 2nd respondent to direct the petitioner-Workers' Union to conduct elections in a particular manner. However, the management of the 2nd respondent intimated that the management would like to conduct elections and stated that elections were never conducted so far by outsiders and rejected the request of the petitioner-Workers' Union. Hence, the writ petition is filed.

4. While reiterating the above stated contentions, learned counsel for the petitioner-Workers' Union contended as under:

By giving a separate voters list independent of the voters list given by the petitioner-Workers' Union for conducting elections, the management of the 2nd respondent expressed its patent desire to interfere with the affairs of the petitioner-Workers' Union. The same was done obviously to bring the henchmen of the management of the 2nd respondent as office bearers of the petitioner-Workers' Union. The said intention of the management of the 2nd respondent is *mala fide*. The management of the 2nd respondent delved into irrelevant matters like participant unions as a camouflage for refusing permission to the petitioner-Workers' Union to conduct elections. The matter was dragged on till 10th of March, 2018 by the management of the 2nd respondent to make the present body of office bearers of the petitioner-Workers' Union a defunct body and deal with splinter groups of its henchmen. The same course adopted by the management of the 2nd respondent is an

imminent danger to the petitioner-Workers' Union and is intended to make the petitioner-Workers' Union a defunct body for obvious reasons. The Deputy Chief Executive of the 2nd respondent organization expressed his desire to control the petitioner-Workers' Union for his hidden agenda and the petitioner-Workers' Union submitted complaints against him to the Labour Commissioner and Registrar of Trade Unions, the 4th respondent. In the circumstances, as there is no efficacious alternative remedy, the writ petition is filed for the above stated relief.

5. The case of the respondents 1 & 2 as stated in the counter affidavit of the Industrial Relations officer of the 2nd respondent, in brief, is as follows:

The petitioner-Workers' Union is a combination of nine Trade Unions/ Associations and it was formed in the year 2012 to promote 'one union one industry' and it was registered under the Trade Unions Act, 1926, and is recognised under Central Civil Services (Recognition of Service Association) Rules, 1993. A MOU was also entered into on 18.05.2011 by all the nine participating Unions/ Associations and it was understood that the petitioner-Workers' Union shall strive to get exemption from the said Rules of the year 1993. The MOU which contains clauses for elections etcetera is Consensus Facit Legem. The Department of Atomic Energy granted recognition for the petitioner-Workers' Union for five years from 2012-2017 and re-recognition from 2017-2022. The term of office bearers is two years. If elections are not held within three months from the expiry of the term, the office bearers cease to be elected Office Bearers. The present office bearers of petitioner-Workers' Union ought to have conducted election on before 11.12.2017 and including the grace period of three months the elections ought to have been completed by 11.03.2018. 221 members of the petitioner-Workers' Union, vide note dated 26.09.2017 brought out the shortcomings of the office bearers of the petitioner-Workers' Union and the signatories to the MOU, vide note dated 10.10.2017, approached the 3rd respondent with the no confidence votes and

stating about non-passing of audit statement and requested for sending notices to the 2nd respondent and the petitioner-Workers' Union. It is stated by them that the office bearers of the petitioner-Workers' Union are evading to conduct elections; and, vide note, dated 21.12.2017, they requested the 1st respondent, the Department of Atomic Energy to conduct elections to the managing committee of petitioner-Workers' Union. There were some internal disputes between the managing committee and other members of the petitioner-Workers' Union. Anticipating Law & Order issues in the premises of the respondents 1 and 2, which is a prohibited area, the office bearers of the petitioner-Workers' Union were requested to find out amicable solution to find out industrial peace and harmony since the 2nd respondent is a unit of Department of Atomic Energy and its activities are sensitive in nature. After introduction of check-off system, the 2nd respondent recovered union subscriptions from the salaries of the members as per the list furnished by the petitioner-Workers' Union. On 18.12.2017, the President of the Petitioner (who assumed the post by Nomination after the Superannuation of the former Elected President) suspended 4 members of the petitioner-Workers' Union on the allegation of resorting to anti-union activities which are detrimental to the interest of members and also on the ground that the President, who is not having authority, placed them under suspension as per the provisions laid down under bye-laws. The present office bearers of petitioner-Workers' Union did not come forward for conducting elections in accordance with the provisions contained under the Bye-laws and that there was insistence from other members for conducting the election to maintain industrial peace and harmony. In spite of the above, the present office bearers of the petitioner-Workers' Union did not conduct election following the Conditions stipulated in the MoU and Bye-Law and indulged in an action of *Malum in se*. Two office bearers meanwhile requested for conduct of early elections. However, the petitioner-Workers' Union did not come forward to conduct elections with

animus nocendi (intention to cause harm). The petitioner-Workers' Union was regularly persuaded to maintain industrial peace & harmony. Though seeking the appointment of convener is not within the purview of DOPTM (Department of Personnel Training & Management) however, when the petitioner-Workers' Union sought appointment of the said officer Swamy, SO/ F, as a Convener for conduct elections, in order to maintain industrial harmony, their request was agreed to and was conveyed to them on 05.02.2018. However, he declined to carry out the responsibility. Then, the petitioner-Workers' Union sought the services of G.S.V.V.S.N.Murthy and the same was also agreed to and conveyed on 07.02.2018. Though election notification was issued on 08.02.2018, a Law & Order issue was created in the premises of the 2nd respondent by the office bearers of the petitioner Workers' Union and its other members. Hence, a report was submitted to the CISE in this regard. The convener convened a meeting of all the concerned and almost all the participants agreed for voting through EVM but the office bearers insisted for having voting through ballot paper. However, all the members agreed that the decision of the convener would be final. Moreover, in the election meeting held by the convener on 10.02.2018, it was agreed by all the signatory parties including the office bearers of the petitioner-Workers' Union that whose subscription has been recovered will continue to be a member of the main union and in this regard, they are requested to produce the pay-slip. Since the 2nd respondent has only recovered through check off system the membership fee, the onus lies upon the 2nd respondent to include the name of such individuals in the list which the managing committee of the petitioner-Workers' union was not agreeing for the reasons best known to it and may be with a *mala fide* intention. Since membership fee which was collected from the four suspended members was not refunded to them after their suspension, the Convener felt that it is prudent to allow the said four members to continue as the members of the petitioner-Workers' Union. The total list of the members whose contributions

were recovered excluding 4 members (even though their subscription was recovered) was prepared by the petitioner-Workers' Union. The General Secretary of the petitioner-Workers' Union insisted the Convener to accept the list even after empowering the Convener in the said meeting to take any decision of his own, the same was not agreed to by the Convener. The Convenor vide his note, dated 12.02.2018, informed the petitioner-Workers' Union to give an amount of Rs.1.2 lakhs to meet the election expenditure following the practice of the past years. However, the managing committee of the petitioner-Workers' Union put certain conditions, viz., deleting the name of the four suspended members from the list of members for releasing the payment, and did not make the payment and created embarrassing situation for the Convener. However, since the unethical proposition of the managing committee members of the petitioner-Workers' Union was not accepted by the Convener who urged to include the name of four suspended members on account of recovery of their membership fee, the petitioner-Workers' Union, vide its letter, dated 14.02.2018, has tarnished the image of the convener by accusing him. As a result, the convener opted out. Thereafter, ignoring the conditions of MoU and without having consensus among the signatory parties, the petitioner-Workers' Union showed inclination to involve outsiders in the conduct of elections and sought permission of the 2nd respondent. Meanwhile, the signatory parties urged for unanimous resolution and two office bearers, vide note, dated 23.02.2018, requested to have all party meeting before nominating convener for conducting elections. Based on the same, the petitioner-Workers' Union was advised to have consensus of all parties to conduct elections. Meanwhile, with the law & order incident, on 10.02.2018, the petitioner-Workers' Union revoked the suspension of four members and vide note, dated 07.03.2018, the signatories entered into MoU and requested the petitioner-Workers' Union to conduct elections at the earliest. When the petitioner-Workers' Union requested for availing the services of two officers of

2nd respondent, the same was not considered for lack of consensus of all the participating Trade Unions and signatories of the MoU. Meanwhile, the signatories of the MoU approached SBI for seizure of Union Account. Since then, the petitioner-Workers' Union is taking unilateral decisions. If a consensus decision is made among the participant unions as per bye-laws and clauses of MoU, there will not be any problem for resolving the issue of union elections. The election of managing committee of the petitioner-Workers' Union is purely a private affair of the petitioner-Workers' Union and this respondent has nothing to do with their elections except as regards the request for appointment of observer etcetera as agreed to in the MoU with an intention to maintain industrial peace & harmony and promotion of the principle of 'one industry one union'. There is no interference by the respondents 1 & 2 and hence, the writ petition is liable for dismissal.

6. Learned Assistant Solicitor General appearing for the respondents 1 to 3 reiterated the above submissions and brought to the notice of the Court the documents filed along with the counter and the submissions in support therein.

7. I have given earnest consideration to the facts & submissions.

8. From the narration of the facts & submissions, it is apparent that the core dispute is about the list of members/ voters. The petitioner-Workers' Union forwarded one list of members/ voters to the Convener appointed originally to conduct elections. The management of the 2nd respondent organization also forwarded its list of members/ voters to the Convener. The same triggered the whole issue. The petitioner-Workers' Union submits that the management's list which was also displayed on the Notice Boards by the Convener shall not be considered as consideration of the same would amount to management's interference with the conduct of elections of the petitioner-Workers' Union and its affairs and that there is no scope for the management to interfere in the affairs of the Union. The fact that the petitioner-Workers'

Union sought a clarification from the Convener in that regard and wanted him to clarify that he would conduct elections as per the voters list forward by the petitioner-Workers' Union and refused to release the money required for conduct of elections till the convener clarifies the matter. Later, the matter is precipitated for various reasons and subsequent developments including the development, viz., the appointment of one retired Regional Labour Commissioner (C) as Convener by the petitioner-Workers' Union and the permission sought by it from the 2nd respondent for conduct of elections and the response of the management of the 2nd respondent informing the petitioner-Workers' Union that participants of Trade Unions of NFC made a request that outsiders shall not be engaged for the purpose of conduct of elections and the 2nd respondent's further suggestion that a consensus shall be brought about among all the participant unions and intimation will be given for appointment of convener for further examination as a convener appointed earlier has withdrew from the post of the convener.

9. Adverting to this core issue, it is to be first noted that the members of the petitioner-Workers' Union which has got recognition from the 1st respondent-Union of India, represented by its Secretary to Government of India, Department of Atomic Energy, and its office bearers shall be the employees on the rolls of the 2nd respondent organization, which is a unit of Department of Atomic Energy. The 2nd respondent organization being unit of such Department is a sensitive unit by its very nature. Therefore, it is trite to note that indulgence in the petitioner-Workers' Union's activities by outsiders and participation in its elections by outsiders in any manner is not in the interests of the organization, which is a unit of Atomic Energy of Union of India. There is a check-off system introduced and as per the said system, the management of the 2nd respondent is recovering subscriptions from the salaries of the members furnished by the petitioner-Workers' Union is not in dispute. Therefore, the management is having possession of the details of the

subscribing members of the petitioner-Workers' Union from whose salaries the subscriptions are being recovered. Hence, the management of the 2nd respondent is having an authenticated list of members/ voters of the petitioner-Workers' Union and in fact, the petitioner-Workers' Union is also obliged to make a request to the management of the 2nd respondent to appoint a convener for conduct of elections. Further, the present union is a combination of nine Trade Unions/ Associations and it was formed in the year 2012 to promote the principle 'one union one industry'. Therefore, *prima facie*, this Court finds that the management of the 2nd respondent need not be faulted for furnishing its list of members/ voters to the Convener.

10. Be that as it may, the controversy relates to the holding of the elections of the petitioner-Workers' Union. Therefore, having regard to the controversy, this Court is of the considered view that the writ petition can be disposed of with appropriate directions.

11. In the result, the Writ Petition is disposed of with the following directions: 'The Deputy Chief Labour Commissioner (Central), Government of India, Ministry of Labour & Employment, Vidya Nagar, Hyderabad, to enter into the arena of conduct of elections of the petitioner-Workers' Union and proceed in the matter by preparation of list of members/ voters of the petitioner-Workers' Union for conduct of elections by receiving the lists both from the petitioner-Workers' Union and the management of the 2nd respondent and finalizing a final list having regard to both the lists and arranging for display of the same on the Notice Boards and fixing dates for completion of elections and other formalities. Thereafter, he shall hold elections of the petitioner-Workers' Union in accordance with terms of the MoU and the Bye-Laws and declare the results, however, only after giving an opportunity to the 2nd respondent management to post an Observer of its choice for following the whole process. The whole exercise as indicated supra shall be completed

within a maximum period of three months from the date of receipt of a copy of this order.

No costs.

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

11th April, 2018
RAR

M.SEETHARAMA MURTI, J

