

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
WRIT PETITION NO.23601 OF 2019

ORDER:

This writ petition is filed seeking the following relief:

“..issue an appropriate Writ, Order or Direction, particularly one in the nature of Writ of Mandamus, declaring that the action of 3rd Respondent in rejecting to include the names of 768 Associate Workmen by proceedings No.B/660/2019, dated 18.10.2019 and also further proceedings issued by the 3rd Respondent in No.B/660/2019, dated 02.11.2019 as illegal, unjust, contrary to law, arbitrary, amounts to unfair labour practice, irrational and violative of Articles 14, 16 and 21 of the Constitution of India, and exclusion of 768 Associate Workmen is only to please the 4th respondent management for obvious reasons and declare that the members of the petitioner union namely 768 Associate Workmen (list enclosed in the material papers) are entitled to participate in the ensuing elections to be decided by the 3rd respondent on 16.11.2019 or any other later date by granting all consequential benefits, and pass such other order or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. Heard Sri A.K.Jaya Prakash Rao, Advocate appearing for Sri G.Praveen Kumar, counsel for the petitioner, the Government Pleader for Labour appearing for respondent Nos.1 to 3 and Sri M. Radha Krishna Murthy, counsel for respondent No.4.

3. It has been contended by the petitioner that it is a registered Trade Union and all its members are employees of the 4th respondent Company. The grievance of the petitioner Union is that the 3rd respondent is conducting Union elections and at the instance of the 4th

respondent, the 3rd respondent deleted the names of 768 Associate Workmen of the 4th respondent, who are the members of the petitioner Union, from the voters' list. The petitioner Union further contended that they submitted a representation to the 3rd respondent on 25.10.2019 requesting to include the names of 768 Associate Workmen in the voters' list, but the 3rd respondent has rejected the request of the petitioner Union by proceedings dated 18.10.2019. Challenging the same, the present writ petition is filed.

4. Counsel for the petitioner had contended that 768 Associate Workmen of the 4th respondent are the members of the petitioner Union and they have been regularly paying subscription to the petitioner Union and if they are not allowed to participate in the Union elections, great prejudice would be caused to the petitioner Union, therefore, appropriate orders be passed directing the 3rd respondent to include 768 Associate Workmen in the election process and permit them to participate in the Union elections.

5. Government Pleader appearing for the respondents had contended that the writ petition itself is not maintainable as the 3rd respondent is not discharging any statutory duties and similar issue fell for consideration before this Court in **Dr. Reddy's Formulations Techops-II etc. v. Govt. of Telangana**¹, wherein this Court held that the writ petition is not maintainable as the 2nd respondent therein was not discharging any statutory duties and he was only facilitating the Union to conduct elections.

¹ 2015 (2) ALD 690

6. Counsel appearing for the 4th respondent had also contended that the writ petition itself is not maintainable and he has relied upon the judgment referred to by the Government Pleader.

7. Counsel for the petitioner had further contended that the writ petition is maintainable and in support of his contention, he has relied upon the judgment rendered by this Court in **I.L.S.K. Union v. Commissioner of Labour Govt. of A.P.**², wherein this Court held as under:

“4. The learned Government Pleader for respondents has relied upon a decision of this Court in *Manik Rao v. Deputy Commissioner of Labour, Twin Cities of Hyderabad*, 1979 (II) An.WR 394, in support of his contention that as per the settled law therein, this writ petition under Article 226 of the Constitution of India is not maintainable. As against this, Mr. G. Abdul Khader, learned advocate for the petitioner relied upon a latest pronouncement of a Division Bench of this Court in Writ Appeal No.872/97 (*The V.S.P. Mines Employees Union v. The Rashtriya Ispat Nigam Ltd. and others*) dated 31-7-1997 in support of his contention that the view taken in *Manik Rao's* case (*supra*) is no longer in operation in view of the pronouncement in the said precedent referring to Writ Petition No. 29353/96 which reads as follows:

"Since the law in recent times has taken notice of the presence of a statutory duty under the Trade Unions Act, regulations and instructions issued thereunder and similar other provisions including obligations which parties create upon themselves by agreement that, for ascertaining or establishing majority, a public duty is cast upon all concerned. The above observations in the judgment of the learned single Judge may not in all circumstances be taken as a correct legal view. As to when mandamus, however, shall issue and in what circumstances public duty shall be

² 1997 (6) ALD 806

taken to be performed or required to be performed by persons involved for ascertaining the majority membership of a trade union, shall have to be decided on facts of each case. This case, however, has ceased to be one such cases in which this issue should be taken up in appeal for a decision as the appeal has become infructuous. It shall accordingly be left for decision in an appropriate case."

While concluding its view on such an expression made above, it was pointed that whether Mandamus would issue in such a situation depends upon the facts of each case, however, after all the materials are placed before the Court by the contending parties.

5. On factual situation and the legal implication flowing therefrom, particularly in this case, this Court is of the considered opinion that the view taken by this Court in Manik Rao case (supra) is not absolute or a binding precedent and subject to the facts and circumstances of each case, as laid down by the Division Bench in V.S.P. Mines Employees Union case (cited supra), the Court has to examine whether, in a given situation, an authority is exercising the statutory functions and it is for the Court to examine whether Mandamus or any direction can be issued to enforce or ensure the requisite compliance of such a duty.

6. Admittedly, the petitioner is a trade union registered under Section 8 of the Act. Rule 11 of the Rules of the Petitioner only enjoins that the Union shall have President etc., to be elected in an Annual General Body Meeting in addition to their eligibility for their re-election. It has nothing to do with the mode of election or the authority to hold election. It is only by virtue of the Code there is a procedure for membership of the Unions for the purpose of recognition under the Code. The Chief Labour Commissioner will undertake to arrange verification of membership of Unions entitled to recognition under the Code and arrange for elections. The Code is said to have been evolved as a measure between the management and the workmen for the purpose of maintaining discipline in the industry. There is no source of power under which such a Code

is framed. Neither the preamble nor the clauses in the Code give any indication as to authority or the persons who are responsible in issuing such a Code of Discipline for the purpose of enforcement in Court of law. If the rules of the petitioner and the Code supra are no basis to give relief in this writ petition, this Court apprehends whether the petition is maintainable. But the matter cannot be rested at that stage only as rightly pointed by the learned Advocate for the petitioner. The real epicentre in regard to the rights of the Trade Union and the functions of the authorities to hold elections etc., on verification is a source in the provisions of the Industrial Disputes Act and the relevant provision is Section 2(k) which reads as follows:

"Industrial Dispute means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

As rightly postulated by the learned advocate for the petitioner, the elections to Union forbears the settlement of dispute between workmen and workmen. Moreover, the womb of the law in such a situation does not totally rests either in the rules of the trade Unions or in Code of Discipline but elsewhere. The expression 'statutory duty' or 'statutory obligation' may not always lie in a particular statute either like the Trade Unions Act or the Industrial Disputes Act or any other relevant law dealing with such a situation. The origin is found in the true implication of the Provisions of the Evidence Act also. Section 114 illustration (e) of the Evidence Act presumes that judicial and official acts have been regularly performed. However, it is the discretion of the Court to draw such a presumption within the expression of 'may'. But when the facts disclose the basis, the Court is not only entitled to draw an inference but also will do well in drawing presumption to maintain the legal and the human order as a whole. If we read the true implication of Section 114 of the Evidence Act, that enjoined thereunder is enjoining normally in course of natural events and human conduct and public and private business. In this expression

'public duty' and the 'official duty' are also contemplated to know whether it is the Official act or public act to give a clothing of the statutory requirement. In the present case, as in the other cases where a party is called upon to perform a duty like holding elections, it cannot be performed in the individual capacity. In the communication dated 25-1-1997 of respondent No. 2 addressed to the President and other office bearers of the trade union, the preamble says:

"I have been appointed by the Commissioner of Labour, A.P., Hyderabad as Verification Officer to conduct verification of membership of eligible trade union operation in India Leaf Spring Ltd., Nacharam under Code of Discipline to determine the eligibility of the Union for the purpose of recognition by the management."

The source of power derived to respondent No. 2 through respondent No. 1 is by means of an official order passed by respondent No. 1 in Memo No.E1/24289/96 dated 11-12-1996. Otherwise, there was no reason for respondent No. 2 to act in such a situation. Patently, such a communication has been issued by respondent No. 2 under the banner of Government of A.P., Labour Department. They could not have acted in the individual capacity except in the legal garb of the official status and on behalf of the Government of A.P. through the Labour Department. The simple test whether such a conduct or act is official act or not can be gathered from Section 74 of the Evidence Act which deals with public documents which are enumerated as follows:

- "(1) documents forming the acts or records of the acts-
- (i) of the sovereign authority;
 - (ii) of official bodies and tribunals and
 - (iii) of public officers, legislative, judicial and executive of any part of India or of the Commonwealth, or of a foreign country;
- (2) Public records kept in any State of private documents."

The communication of Respondents 1 and 2 supra cannot be but a public document within the meaning of Section 74 of the Evidence Act. Such document enjoins the presumption not only

under Section 114 of the Evidence Act but also for the purpose of proof under Secs.76 and 77 of the Evidence Act to prove by mere production of such a document. In the counter affidavit filed on behalf of the 1st respondent, it is not stated that one of such functions was not an official act or public act. The only reason given in the counter affidavit for non-conformance of the required act was due to the pendency of the writ petition supra. The status of the respondents as public authorities or officers in dealing with the matter of the petitioner is not main issue of fact or law. Whether an act of an authority is individual or private depends upon the manner and the method in which it is performed. The test is whether it can be done in the individual capacity or *designata, persona designata or non-persona designata*. No such test is passed in this case by the respondents' non- performance of such a function in relation to the petitioner. Therefore, this Court is totally convinced that the act undertaken by the respondents is one of the official acts having the garb of a statutory force for the purpose of performance. That is how a Division Bench of this Court in the decision supra has declared the law that the question whether a particular authority is exercising the statutory functions or not depends upon the facts and circumstances of each case. Having examined the facts and circumstances of this case, this Court is totally convinced that the respondents are performing the official acts amounting to statutory discharge of the functions to attract the powers of the Court to exercise under Article 226 of the Constitution. Therefore, within the law declared above, the petitioner is justified in approaching this Court seeking the relief as claimed.”

Relying on the aforesaid judgment, learned counsel for the petitioner contended that the writ petition is maintainable and appropriate orders be passed in this writ petition directing the respondents to include 768 Associate Workmen in the election process and permit them to participate in the election.

8. This Court, having considered the submissions of learned counsel for respective parties, is of the considered view that the judgment in **I.L.S.K Union**'s case (2 supra) relied upon by learned counsel for the petitioner was declared as *per incuriam* in the subsequent judgment rendered by this Court in **Dr. Reddy's** case (1 supra). Therefore, learned counsel for the petitioner cannot rely upon the judgment which was already declared as *per incuriam*. Further, since the issue raised in the present writ petition is squarely covered by the judgment rendered by this Court in **Dr. Reddy's** case (1 supra), this Court is of the considered view that this writ petition is not maintainable.

9. Accordingly, the writ petition is dismissed. No order as to costs.
Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

13th November, 2019
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