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W.P.No.35238 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

Writ Petition No.35238 of 2013
and M.P.Nos.1 and 2 of 2013

- 1.NLC Pattali Thozhil Sangam
Rep.by its General Secretary
D-10, KN Subburaman Road
Block-19, Neyveli.
- 2.Thiru.S.Selvaraju

.... Petitioners

-Vs-

- 1.Neyveli Lignite Corporation Ltd.,
Rep.by its Chairman-cum-Managing Director
Corporate Office, Neyveli-1.
- 2.The Director (HR)
Corporate Office
Neyveli Lignite Corporation Ltd.,
Neyveli-1.
- 3.The Chief General Manager (HR)
HR Department, Corporate Office
Neyveli Lignite Corporation Ltd.,
Neyveli.
4. Union of India represented by
Ministry of Labour and Employment
Shram Shakti Bhawan, Rafi Marg
New Delhi – 110 001.
(R4 suo-motu impleaded vide court
order dated 12.06.2023)

.... Respondents



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Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order in Letter No.CORP/HR/775/261/2013-1 dated 16.12.2013 passed by the 3rd respondent, quash the same and consequently direct the respondents to continue to provide and extend the check off facility to the petitioners union.

For Petitioners : Mr.Ajoy Khose
for Mr.S.Makesh

For Respondents : Mr.N.Nithiyanandam – for R1 to R3
Mr.N.Ramesh – for R4
(impleaded respondent)

ORDER

Union of India represented by Ministry of Labour and Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi – 110 001 is suo-motu impleaded as the 4th respondent. The petitioner seeks for a writ of Certiorarified Mandamus to quash the proceedings of the 3rd respondent dated 16.12.2013.

2. The case of the petitioner is that it is an Union which is serving the interests of the employees who are engaged by the 1st respondent. The union was started in the year 1990. It is a registered but unrecognized union. The union claims that it has about 1600 members at the time of filing the writ petition. It states that 15% of the labour force of the 1st respondent are its



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members. It had sought for 'check off facility' with the 1st respondent. 'Check off facility' was also given to it by the 1st respondent. By the 'check off facility' the members of the union, instead of paying their subscription directly to the union, the 1st respondent steps in, deducts the same through salary and deposits it with the writ petitioner. According to the writ petitioner, it was arbitrarily withdrawn without any hearing.

3. Learned counsel for the petitioners Mr. Ajoy Khose would state that this is in violation of Section 9A read with Item 8 of the Fourth Schedule to the Industrial Disputes Act. Therefore, he would pray for allowing the writ petition and quashing the order of the 3rd respondent.

4. Mr.Nithiyanandam, learned counsel appearing for respondents 1 to 3 would submit that it is only a concession that had been extended to the writ petitioner and the writ petitioner does not have any right to claim the same and also seek its enforcement by way of a writ petition under Article 226 of the Constitution of India. He would state that this Court had granted an order of injunction restraining the unions from going on strike, but in utter violation of the orders of the High Court, the writ petitioner union had gone on strike between 03.07.2013 to 15.07.2013. He would state that an opportunity was given to the petitioner to make a representation against the proposed withdrawal of



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concession, but the writ petitioner union had not availed this opportunity.

Therefore, it was decided by the 1st respondent to withdraw the 'check off' concession that had been offered to the writ petitioner and the same was communicated to it by the impugned order.

5. In the light of the order that I propose to pass, I am not going into the merits of the case as to whether 'check off' facility can be treated as concession under Section 9A read with Item 8 of the Fourth Schedule to the Industrial Disputes Act. Item 8 of the Fourth Schedule merely speaks about "*withdrawal of any customary concession or privilege or change in usage*". Whether 'check off' is a part of conditions of service or not requires evidence especially when customary claim is being made by the writ petitioner. This is not a case where I can record the evidence in a writ petition and pass an order, especially when the said facts are very stoutly disputed by the learned counsel for the respondents.

6. In the light of the above, the newly impleaded 4th respondent, who is represented by Mr.N.Ramesh is directed to refer the dispute viz., "whether 'check off facility' is a part of customary concession or privilege or change in usage of conditions of service with respect to the 1st respondent Management qua the writ petitioner". The reference shall be made to the Central Government Industrial Tribunal within a period of four weeks from the date of receipt of a copy of this



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order. The interim stay granted by this Court is continued for a period of four weeks. All the issues including locus standi are left open to be agitated before the Central Government Industrial Tribunal.

7. With the above direction the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

12.06.2023

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST
To

- 1.The Chairman-cum-Managing Director
Neyveli Lignite Corporation Ltd., Corporate Office, Neyveli-1.
- 2.The Director (HR), Corporate Office
Neyveli Lignite Corporation Ltd., Neyveli-1.
- 3.The Chief General Manager (HR)
HR Department, Corporate Office
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V. LAKSHMINARAYANAN, J.

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