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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
BEFORE
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ W.P.(C) 3577/2016, CM. APPLN. 15323/2016, CM. APPLN. 844/2018 & CM. APPLN. 7548/2020

Between:-

MTNL STAFF UNION CLASS III & IV (REGD.)

Having Its Office At HM-10, Telegraph Lane Atul Grove Road,
New Delhi-110 001

Through its President Sh. Mange Ram Sharma

.....PETITIONER

(Through: Mr. Deepak Tyagi, Adv.)

versus

AND

MAHANAGAR TELEPHONE NIGAM LTD.

9, CGO Complex

New Delhi.

.....RESPONDENT NO.1

Chairman & Managing Director

Mahanagar Telephone Nigam Ltd.

9, CGO Complex

New Delhi.

.....RESPONDENT NO.2

Executive Director, Delhi

Mahanagar Telephone Nigam Ltd.

KhurshidLal Bhawan, Janpat

New Delhi-110001.

.....RESPONDENT NO.3

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Secretary (Labour)

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By:PURUSHAINDRA
KUMAR KAURAV



Ministry of Labour & Employment
Union of India, Shramshakti Bhawan
Rafi Marg, New Delhi-110 001.RESPONDENT NO.4

MTNL Mazdoor Sangh
T-26 - A, Atul Grove Road /
New Delhi-110 001RESPONDENT NO.5

*(Through: Ms. Sriparna Chatterjee, Adv.
for R-1 to 3.
Mr. Vivek Goyal. Mr. Gokul Sharma, Mr.
Aryan Aggarwal, Ms. Anita Goyal & Ms.
Priyanka Singh, Advocates for R-4.
Mr. Neeraj Dutt Gaur, Adv. for R-5)*

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Reserved on: 09.07.2024
Pronounced on: 06.08.2024

J U D G M E N T

The instant writ petition has been preferred under Article 226 of the Constitution of India, praying for directions to respondent nos.1 to 4, to initiate the process of verification of membership of trade unions operating in the establishment of respondent no.1-Mahanagar Telephone Nigam Ltd., Delhi Unit (hereinafter 'MTNL') through secret ballot in terms of the Code of Discipline (hereinafter 'CoD'), in order to set in motion the process of election.

2. The petitioner is a trade union registered under the Trade Union Act, 1926 and claims to be operating in MTNL and is also affiliated to the Indian National Trade Union Congress. The process of identification or verification of membership of majority unions operating in MTNL through secret ballot is laid down in the guidelines

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titled as “Second Term Year 2002 for Verification of Membership of

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Unions Operating in MTNL Delhi unit through Secret Ballot” (hereinafter ‘Guidelines’), which mandates to act in accordance with the CoD for recognition of a majority union.

3. The facts of the present case would reveal that on 11.10.2012, an election through secret ballot was conducted for verification of membership of unions operating in MTNL. Pursuant to the said election, respondent no.5-MTNL Mazdoor Sangh emerged victorious by securing the highest number of votes and was recognized as the majority union for the term of two years with effect from 11.10.2012. Since the period of recognition was slated to end on 10.10.2014, various other trade unions including the petitioner are stated to have made several representations to initiate the process of election for verification of membership of unions operating in MTNL.

4. Even after the expiry of the term of recognition of respondent no.5, the petitioner claims to have made several communications to respondent nos.1 to 4 with a request to conduct the exercise of verification, but to no avail. Thereafter, being aggrieved by the inaction of respondent nos. 1 to 4 to accede to the demand of other trade unions for orchestrating elections and rather, continuing the recognition of respondent no.5 as the majority union, the petitioner has filed the instant petition on 25.04.2016.

5. However, at the outset, the respondents have raised a preliminary objection on the ground of maintainability of writ petition as the CoD, which is pressed into service, has no statutory basis as also on the ground that the petitioner has no *locus standi* since the same is a defunct trade union. The respondents submit that in any case, for enforcement of any right emanating from the CoD, no writ should be

entertained.



6. Ms. Sriparna Chatterjee, learned counsel appearing on behalf of respondent nos.1 to 3, submitted that the said Code is merely a voluntary agreement entered into between the management and workers and is not amenable to interference in exercise of writ jurisdiction.

7. Learned counsel relied upon the decision of the High Court of Judicature at Hyderabad in the case of ***Reddys Formulation Techops-II v. Govt. of Telangana***¹, to substantiate her submissions.

8. Further, Mr. Neeraj Dutt Gaur, learned counsel appearing on behalf of respondent no.5 submitted that any union can challenge the status of a recognised majority union only on two grounds, namely i) *locus standii* and ii) violation of the rules, regulations and bye-laws of the CoD. He contended that the present petition is being contested through Sh. Mange Ram Sharma, who otherwise has no authority to represent the petitioner as there exist no rules, regulations or bye-laws to constitute an ad-hoc committee under the presidentship of the Vice-President of the union. According to him, Sh. Mange Ram Sharma has illegally obtained the authority to pursue the present litigation, in addition to the fact that the petitioner has already become defunct and therefore, the petitioner has no *locus standii* in the instant matter.

9. Countering the aforementioned submissions, Mr. Deepak Tyagi, learned counsel appearing for the petitioner submitted that MTNL, being a Government of India undertaking and a government company, falls under the definition of 'State' under Article 12 of the Constitution of India and hence, the Court has all the powers to issue writ or directions against the same. He contended that MTNL has never raised



or pleaded any grounds challenging the maintainability of the writ petition itself against such elections.

10. While placing reliance on the order dated 08.10.2012 passed by this Court in W.P.(C) 6333/2012 titled as ***MTNL Karamchari Union (Regd.) v. Chief Labour Commissioner (Central) & Ors.***, the petitioner asserted that the Court entertained the petition filed by a trade union operating in MTNL and disposed of the writ petition with a direction to hold elections in Mumbai unit of MTNL. He, therefore, submitted that since the petition has already been entertained in the past *qua* the election of trade union in MTNL, there is no reason to reject the instant petition on the ground of maintainability.

11. Learned counsel further drew sustenance from the affidavit dated 04.01.2017, filed by the petitioner in terms of the order dated 16.11.2016, to submit that the petitioner has the requisite *locus standii* to contest the present petition and the assertions made by respondent no.5 are devoid of any merit.

12. I have heard the learned counsel appearing for the parties and perused the record.

13. Before embarking upon the factual matrix of the case at hand in order to rule upon the rival submissions, it is pertinent to take note of the order sheets dated 16.11.2016 and 26.07.2023 in the present case. Evidently, on the former date, respondent no.5 had raised a challenge with respect to the maintainability of the present petition on the ground that the Constitution of the petitioner body does not permit any ad-hoc Executive Committee and since the instant case has been unauthorisedly filed by Sh. Mange Ram Sharma, the petitioner lacks the requisite *locus standii*. A perusal of the latter order sheet reflects

that the Court had called upon the petitioner to satisfy as to how the



writ petition would be maintainable considering the nature of relief prayed herein.

14. Thus, the solitary issue which falls for consideration of the Court, at this stage, pertains to maintainability of the present petition, more particularly in light of the relief sought by the petitioner.

15. A glance through the Guidelines and the CoD therein would evince that it is merely a tripartite agreement between the trade unions operating in MTNL, MTNL itself and the Ministry of Labour. It contains rules, regulations and responsibilities of all parties therein with respect to the conduct of the said exercise. A bare reading of the scope of the recognised union at the unit level, as set out in the Guidelines, would show that the same has been created to espouse the cause of the employees in the concerned unit as also with regard to the implementation of personnel policy matters etc. pursuant to decisions at the Joint Consultative Council level.

16. It is further seen that the Guidelines outline “the draft procedure for determination of relative strength of unions operating in an establishment under the central sphere by secret ballot.” The Guidelines further mention that there is no legislative backing or national agreement for determining the representative method of secret ballot. It is thus observed that the Guidelines or the CoD therein does not have any statutory backing which would lead to any infraction of statutory rights of the petitioner.

17. On this aspect, reliance can also be placed upon the decision cited by the respondents in the case of **Reddys Formulations** (*supra*), wherein, while relying upon a catena of decisions, the High Court of Judicature at Hyderabad took a view that a writ petition under Article

226 of the Constitution of India would not lie to enforce the CoD



since the same does not have any statutory force. The relevant paragraphs of the said decision read as under:-

“15. In Management of APSRTC, Hyderabad (supra), the above two decisions were followed and it was held:

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. *The Code of Discipline is neither referable to any specific statute nor does the Industrial Disputes Act, which prescribes the procedure for resolution of Industrial Disputes either amicably by means of conciliation, settlements etc., or by adjudication by the Labour Courts/Industrial Tribunals, place any restriction requiring an industrial dispute to be raised only by a Union recognized by the employer under the Code of Discipline. Industrial Dispute : For a dispute to be referred for adjudication to the Industrial Tribunal it is not necessary that it should have been raised only by a recognized or majority Union.*

*17. It is not mandatory for an employer to negotiate only with a particular Union nor would it disentitle a registered Trade Union from raising a dispute concerning the workmen of the establishment. **The Code of Discipline is non-statutory, is a voluntary agreement between the Management and the workers and cannot be enforced by a writ of mandamus.** (HMT Employees Union v. HMT, Judgment of O.C. hinnappa Reddy, J., in WP No. 3174 of 1967 dated 7.8.1968; All India Reserve Bank Employees Federation v. Governor, Reserve Bank of India, Order in W.P.M.P. No. 11838 of 1982 and WPMP No. 14971 of 1984 in W.P. No. 8082 of 1982 dt.25.7.1984).*

18. No reliance can, therefore, be placed on the Code of Discipline to contend that it is only the Union, recognized by the Management, thereunder, which is entitled to raise a dispute in relation to the employees of the petitioner Corporation and not the minority Union, even if it be representative of a substantial number of



*workmen employed in the establishment.
(emphasis supplied)*

16. Thus the settled legal position is that a Writ Petition under Article 226 of the Constitution of India would not lie to enforce the Code of Discipline since the latter has no statutory force.”

[emphasis supplied]

18. Having perused the contents of the Guidelines, it is also significant to go through the Constitution of the petitioner body, which has been placed on record. It can be safely concluded from a reading of the ‘aims and objectives’ of the said Constitution, that the petitioner primarily indulges in promotion of interests of the employees of MTNL, in general and redressal of grievances of its members, in particular.

19. It has been well settled through plethora of decisions rendered by the Supreme Court that a writ would not lie to enforce purely private law rights. In the case of ***K.K. Saksena v. International Commission on Irrigation & Drainage***², the Supreme Court has held that all the decisions of a body, which is otherwise performing public duty, would not be amendable to judicial review. Paragraph no.43 of the said decision reads as under:-

“43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is “State” within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative



law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is “State” under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.”

[emphasis supplied]

20. In the case of **Ramakrishna Mission v. Kago Kunya**³, the Supreme Court, while explaining the distinction between public and private functions, held that an authority could be said to discharge a public function if its actions closely resemble the functions which are performed by the State in its sovereign capacity. The relevant paragraphs of the said decision read as under:-

“27. In *Binny Ltd. v. V. Sadasivan* [*Binny Ltd. v. V. Sadasivan*, (2005) 6 SCC 657 : 2005 SCC (L&S) 881] , a two-Judge Bench of this Court noted the distinction between public and private functions. It held thus : (SCC pp. 665-66, para 11)

“11. ... It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a “public function” when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest.”

28. The Bench elucidated on the scope of mandamus : (SCC p. 673, para 29)

“29. ... However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the



nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action ... There cannot be any general definition of public authority or public action. The facts of each case decide the point.”

30.Thus, even if the body discharges a public function in a wider sense, there is no public law element involved in the enforcement of a private contract of service.

32. Before an organisation can be held to discharge a public function, the function must be of a character that is closely related to functions which are performed by the State in its sovereign capacity. There is nothing on record to indicate that the hospital performs functions which are akin to those solely performed by State authorities. Medical services are provided by private as well as State entities. The character of the organisation as a public authority is dependent on the circumstances of the case. In setting up the hospital, the Mission cannot be construed as having assumed a public function. The hospital has no monopoly status conferred or mandated by law. That it was the first in the State to provide service of a particular dispensation does not make it an “authority” within the meaning of Article 226. State Governments provide concessional terms to a variety of organisations in order to attract them to set up establishments within the territorial jurisdiction of the State. The State may encourage them as an adjunct of its social policy or the imperatives of economic development. The mere fact that land had been provided on a concessional basis to the hospital would not by itself result in the conclusion that the hospital performs a public function. In the present case, the absence of State control in the management of the hospital has a significant



bearing on our coming to the conclusion that the hospital does not come within the ambit of a public authority.”

21. A Coordinate Bench of this Court in the case of ***Pawan Kumar & Ors. v. Union of India & Ors.***⁴, while deciding the maintainability of a writ petition against a cooperative society, held that merely because the procedure of elections owes its genesis to the Act and Rules, it would not be enough to reach the conclusion that a society would be amenable to the writ jurisdiction of the Court. Paragraph no.31 of the said decision is reproduced as under:-

“31. Turning then to the registration of the cooperative society under the Act, it may at the outset be observed that the affairs of various bodies may be regulated and controlled by myriad statutes in respect of a wide range of activities and functions that may be performed by them. However, merely because the affairs of a particular body may be regulated by statute, that cannot be determinative of the question that stands raised. As was aptly observed by the Supreme Court in Ramakrishna Mission, law is a “ubiquitous phenomenon” and touches various aspects of the functioning of a body. It was observed that merely because a body is obligated to comply with various statutory requirements, that cannot be conclusive to answer the question of whether it is discharging a public function. The fact that the cooperative society is registered under the Act or that the Byelaws or the procedure of elections owe their genesis to the Act and the Rules, would not be sufficient to hold that it would be amenable to the writ jurisdiction of the Court.”

[emphasis supplied]



22. This Court, in another decision titled as ***Dr. Saravana Kodandapani & Anr. v. The All-India Ophthalmological Society***⁵, wherein, a challenge was laid to the election of a society, has held that if the bye-laws governing elections of such registered organisation are not statutory, then a writ for its contravention will not be maintainable. The relevant paragraph of the said decision is reproduced herein for reference:-

“26. What has been argued by the learned counsel appearing on behalf of the petitioners is that the vires of the Bye-Laws is under challenge, therefore, the same cannot be examined by any other court. The said argument is not acceptable for the simple reason that the Bye-Laws of respondent No.1-Society are not statutory in nature. There is no reason to believe that if any challenge to the Bye-Laws in question is laid before the appropriate court, the same would not be decided in accordance with law.”

23. Reverting to the facts of the present case, it is discernible that the challenge raised by the petitioner purportedly hinges on the infraction of the CoD by the respondents. However, from the aforementioned discussion, it becomes apparent that as per the CoD, there is no statutory obligation on respondent nos.1 to 4 to conduct the process of verification of membership of majority unions operating in MTNL through secret ballot. Bearing in mind the decision rendered by the Supreme Court in ***Ramakrishna Mission*** (*supra*) in juxtaposition with the Guidelines, the recognition of trade unions operating in MTNL as majority unions cannot be said to involve any public function for the purpose of holding the respondents amenable to writ jurisdiction. The public law element is conspicuously missing. The petitioner cannot



assert any indefeasible statutory right for holding the elections through the secret ballot as per the CoD.

24. Insofar as the order dated 08.10.2012 in W.P.(C) 6333/2012 is concerned, the said order does not deal with the contention of maintainability of the writ petition at all. Since the issue of maintainability had not been dealt with, the said order could not be construed to be an authority on the issue under consideration in the instant petition. Therefore, the said order would not come to rescue the case of the petitioner. A decision is binding not because of its outcome but in regard to its rationale and the principles laid down therein.

25. In view of the aforesaid, the present writ petition is not maintainable. Consequently, the writ petition is dismissed alongwith the pending application(s), if any.

26. The parties are at liberty to approach the appropriate forum/Court for redressal of their grievance. Needless to state, the Court has not commented on merits of the case. All the rights and contentions are left open.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 06, 2024/P

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