
(2014) 11 AP CK 0021

In the Andhra Pradesh High Court

Case No : Writ Petition No. 31577 of 2014

Reddy's Formulations Techops-II

APPELLANT

Vs

The Govt. of Telangana

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226
Evidence Act, 1872 — Section 114, 74
Industrial Disputes Act, 1947 — Section 2(s)
Trade Unions Act, 1926 — Section 10, 2(g)

Citation : (2014) 11 AP CK 0021

Hon'ble Judges : M.S. Ramachandra Rao, J

Bench : Single Bench

Advocate : V. Narasimha Goud, Advocate for the Appellant

Judgement

M.S. Ramachandra Rao, J.

Heard Sri V. Narasimha Goud, learned counsel for petitioner Trade Union, learned Government Pleader for Labour for respondent Nos. 1 and 2 and Sri S. Ravindranath, learned counsel for 3rd respondent.

1. In this Writ Petition, the petitioner questions proceedings dt. 08-10-2014 under which 43 members of the petitioner's Trade Union, who are employed as Senior Technical Officers in 3rd respondent industry, were declared by 2nd respondent not to come within the definition of the term "workmen" as defined in Section 2(s) of the Industrial Disputes Act, 1947 and have to be excluded from the list of persons eligible to vote in the secret ballot to determine the majority Trade Union of 3rd respondent. The petitioner seeks a direction to 2nd respondent to include these employees in the voters list so that they may cast their vote in secret ballot to determine whether the petitioner or 4th respondent is the majority Trade Union in 3rd respondent industry.

2. The petitioner Trade Union was registered under the provisions of Trade Union Act, 1926 on 22-01-2007. According to the petitioner, it has 110 members who

had paid subscription to it for the previous 2 years and they are all working in 3rd respondent industry. The 4th respondent is also a Trade Union having membership of the employees of 3rd respondent industry.

3. The 4th respondent Trade Union had been recognized as majority Trade Union in the 3rd respondent industry upto 21-06-2014. The 2nd respondent called for a joint meeting between the Management of the 3rd respondent and representatives of the petitioner and 4th respondent Trade Unions for conduct of secret ballot to determine the majority Trade Union in 3rd respondent industry. The Management of the 3rd respondent submitted 10 copies of muster roll with reckoning date as 01-06-2014 consisting of 67 employees. When this muster roll was handed over to the petitioner and 4th respondent Trade Unions, 4th respondent Union raised an objection that they have a membership of 86 employees in their Trade Union, and the petitioner union also raised an objection that their Trade Union consists of 110 employees, while the Management submitted the muster roll of only 67 employees.

4. In view of the discrepancy between the number of employees (muster roll) submitted by the Management of 3rd respondent and the contentions of the petitioner and 4th respondent Trade Unions, a decision was taken by the 2nd respondent vide memo dt. 22-08-2014 to depute the Assistant Commissioner of Labour, Ranga Reddy to visit the 3rd respondent's unit and verify the veracity and claims of the Management and Trade Unions and to probe into the nature of work and designation of the 43 employees.

5. The Assistant Commissioner of Labour, Ranga Reddy, pursuant to the above memo, visited the factory of the 3rd respondent on 12-09-2014 and submitted a report dt. 07-10-2014. In his report, he stated that the Management has submitted a muster roll of 67 employees who are designated as Technicians and these persons only come under the category of "Workman", and are eligible to take part in the verification process to determine the majority Trade Union; that the discrepancy in the figure i.e. number of employees submitted by the Management and the Trade Unions is due to the reason that the unions have included the category of Senior Technical Officers and have pleaded that they should also be allowed to participate in the verification process since they would come under the category of "workman"; that on verification of the nature of the work of Senior Technical Officers, it was found that they were responsible for execution and supervision of online documentation of batch records, log books and status labeling, to supervise the job of the technicians and are also involved in the training of subordinates and new recruits; and that the Senior Technical Officers are getting the gross salary of above Rs. 10,000/-.

6. On the basis of the said report, the 2nd respondent determined in the impugned order that there being no definition of workmen in the Trade Union Act, 1926, the definition of the term "Workman" as defined in Section 2(s) of the Industrial Disputes Act, 1947 can be imported; and since under the said provision, the person employed in supervisory capacity drawing wages exceeding

Rs. 10,000/- per mensem do not come under the category of workmen, the 43 Senior Technical Officers cannot be considered to be "workman" and they cannot be allowed to participate in the secret ballot / verification process to determine the majority Trade Union of 3rd respondent.

7. Assailing the same, this Writ Petition is filed.

8. The learned counsel for petitioner submits that this determination of the 2nd respondent cannot be accepted; that this determination was done at the instance of 3rd respondent to prevent the petitioner Trade Union from being declared as a majority Trade Union of 3rd respondent; it amounts to "unfair labour practice" by 3rd respondent within the meaning of Schedule V of the Industrial Disputes Act, 1947; the 2nd respondent ought not to have imported the definition of term "Workman" provided in Section 2(s) of the Industrial Disputes Act, 1947 to determine whether the Senior Technical Officers come within the category of "Workman" entitled to vote in the secret ballot to determine the majority Trade Union of the 3rd respondent industry; that the 2nd respondent is proposing to host a joint meeting on 24-10-2014 to fix the election schedule in order to help respondent Nos. 3 and 4; that 4th respondent has been acting as per the instruction of 3rd respondent while making settlements; that the 2nd respondent did not act impartially in passing the impugned order; and therefore, the said order has to be set aside as it is violative of Articles 14 and 21 of the Constitution of India as well as the provisions of Trade Union Act, 1926. He placed reliance on the decisions in Government Tool Room and Training Centre's Supervisory & Officers Association and another v. Assistant Labour Commissioner and others 2002 LAB. I.C. 1034, Tirumala Tirupati Devasthanam Vs. Commissioner of Labour and Others, , I. I. Srinivasa Rao and Others Vs. Commissioner of Labour and Others, , India Leaf Spring Kamgar Union Vs. Commissioner of Labour, Govt. of A.P. and Another, and Panyam Cements Employees Union Affiliated to INTUC Vs. Commissioner of Labour and Others, .

9. The learned counsel for 3rd respondent refuted the said contentions and contended that the Writ Petition itself is not maintainable because the impugned order has been passed by the 2nd respondent in the process of conducting secret ballot to determine which of the Trade Unions is the majority Trade union of 3rd respondent; that these elections are being conducted pursuant to the Code of Discipline; that while acting pursuant to the Code of Discipline to determine which of the 2 Trade Unions is a majority union of 3rd respondent industry, the 2nd respondent is not discharging any statutory duty or public duty; therefore no writ of mandamus can lie and Code of Discipline itself cannot be enforced under Article 226 of the Constitution of India.

10. I have noted the submissions of both sides.

11. The historical background of Code of Discipline, it's contents has been succinctly set out in a decision of this Court in The Management of APSRTC Vs. The Workmen of the APSRTC and Another, :

"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 1.6.1958. 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 recognize the Union in accordance with the criteria provided in Annexure-I to that Appendix, which was evolved at the 16th Sessions of the Indian Labour Conference held in May, 1958. Under Clause-4 of Annexure-I when a Union has been recognized, there should be no change in its position for a period of two years. Under Clause 5 of the said Annexure, when there are several Unions in an industry or establishment, the one with the largest membership should be recognized. Under Clause 8, only Unions which observe the Code of Discipline would be entitled to recognition I.T.C. Employees Association and Others Vs. State of Karnataka and Others, ."

12. In HMT Employees Union v. HMT ORDER DT. 7.8.1968 IN W.P.3174 OF 1967, Justice Chinnappa Reddi, as he then was, rejected the contention of the petitioner Trade union therein that the Code of Discipline should be enforced, observing:

"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."

13. This decision has been followed in another judgment IN All India Reserve Bank Employees" Federation, Rep. by its General Secretary, P. Krishna Reddy and Governor, Reserve Bank of India Order dt. 25-07-1984 in W.P.M.P. No. 14971 of 1984 in W.P. No. 8082 of 2982.

14. 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. Chinnappa 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)

15. 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.

16. The question arises if, in the process of determination of a majority Trade Union and according recognition to it (which is done under the said Code of Discipline), officials like the 2nd respondent make a determination of the nature contained in the impugned order dt. 08-10-2014, can a Writ Petition under Article 226 of the Constitution of India lie?

17. In Government Tool Room and Training Centers Supervisory and Officers Association and another (supra), cited by the Counsel for the petitioner, an order was passed by the Assistant Commissioner of Labour refusing to register the 1st respondent as a Trade Union under the Trade Unions Act, 1926 on the ground that the applicants are not workmen and that they were supervisory officers and managers by applying the provisions of Section 2(s) of the Industrial Disputes Act, 1947. The Karnataka High Court set aside the said order on the ground that in Section 2(g) of the Trade Unions Act, 1926 which defines the terms "trade dispute" and the term "workman", the latter term was defined to mean "all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises"; that the provision of Section 2(s)

of the Industrial Disputes Act, 1947 cannot be imported and applied in the context of registration of a Trade Union governed by the Trade Unions Act, 1926; registration is not granted on the persons who constitute the union (non-workmen) and that the emphasis is on the purpose for which the union is formed. So it set aside order of the Assistant Labour Commissioner and directed him to register the petitioner as a Trade Union. I am of the opinion that the said decision would not apply to the present case for the reason that in that case there was an order passed refusing to register the applicant Trade Union by a statutory authority i.e. the Assistant Labour Commissioner and since the said order is passed exercising power under a statute, a Writ Petition was rightly held to be maintainable. In the present case, the 2nd respondent is the returning officer for the conduct of secret ballot elections to determine the majority Trade union in the 3rd respondent industry and he is not discharging any statutory duty conferred under the Trade Unions Act, 1926, but he is acting under a non-statutory Code of Discipline.

18. For the same reason, the decision in *Tirumala Tirupathi Devasthanams* (supra) also has no application since the said case also dealt with a statutory order passed by the Commissioner of Labour under Section 10 of the Trade Unions Act, 1926 refusing an application to cancel the registration of a Trade Union.

19. In *I. Srinivasa Rao* (supra), a Writ was filed seeking a Mandamus questioning the action of 2nd respondent therein in issuing a letter not including the names of 147 badli workers in the voters list to participate in the secret ballot being conducted to determine the status of the majority union in 3rd respondent-industry. Although a contention as to maintainability of the Writ Petition for enforcing the "Procedure for Verification of Membership of Unions for the purpose of recognition under the Code of Discipline" was raised specifically, a learned Single Judge of this Court rejected the said contention and held that badli worker is also a "workman" and is entitled to participate in the verification process for the purpose of deciding as to the status of the majority Trade union. Reliance was placed on the decision in *Panyam Cements Employees' Union* (supra) and conclusion was drawn that denial of membership by a Trade Union or denial of participation in the verification process by the employer or anybody would amount to "unfair labour practice" and that it is a statutory obligation on the part of the respondent to be fair to the workman in permitting them to join a Trade Union of their choice and to participate in the verification process. It was observed that merely because Code of Discipline is not a statute nor it has any statutory flavour, a Writ Petition of the nature mentioned above, cannot be said to be not maintainable.

20. In *Panyam Cements Employees' Union* (supra), this Court considered the question whether certain categories of workers were properly included/excluded in the voters list prepared for conduct of election by secret ballot under the Code of Discipline to determine the majority Trade Union in *Panyam Cements*

Company. No objection as to maintainability of the Writ Petition on the ground that the Code of Discipline is non-statutory, was raised by any of the parties therein, nor did the Court consider the said issue. However this Court did hold that it would be "unfair labour practice" if the management disapproves a Trade Union of badli workers or discourages badli workers to join a Trade Union or denies voting right to badli workers. It referred to clause (4) of Part I of the Vth Schedule to the Industrial Disputes Act, 1947.

21. In my considered opinion, Panyam Cements Employees" Union (supra) cannot be treated as an authority for the proposition that a Writ Petition is maintainable to enforce the "Procedure for Verification of membership of Unions for the purpose of recognition under the Code of Discipline" and could not have been relied upon in I. Srinivasa Rao (supra) for that proposition.

22. Also both the decisions in Panyam Cements Employees" Union (supra) and I. Srinivasa Rao (supra) have been rendered in ignorance of the decision of O. Chinnappa Reddy, J in HMT Employees" Union (supra) and the decision in All India Reserve Bank Employees" Federation (supra) and have therefore to be held to be per incurium.

23. Even otherwise the conclusion in Panyam Cements Employees" Union (supra) that restraining a category of employees from participating in the verification process/secret ballot as members of a recognized registered Trade Union would amount to "unfair labour practice" is incorrect. Clause 4 of Part-I of the V schedule to the Industrial Disputes Act, 1947 states :

"4. To encourage or discourage membership in any Trade Union by discriminating against any workman, that is to say :

- (a) discharging or punishing a workman because he urged other workmen to join or organize a Trade Union;
- (b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act);
- (c) changing seniority rating of workmen because of Trade Union activity;
- (d) refusing to promote workmen to higher posts on account of their Trade Union activities;
- (e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen and to undermine the strength of their Trade Union;
- (f) discharging office-bearers or active members of the Trade Union on account of their Trade Union activities."

24. Here the management of 3rd respondent has contended that the 43 Senior Technical Officers are not "workmen". Since this act of the management does not fall under sub clauses (a) to (f) mentioned in clause 4 of Part-I of V schedule to

the Industrial Disputes Act, 1947, it can't be said to be "unfair labor practice". The view expressed in Panyam Cements Employees' Union (supra) that any action on the part of the employer/workman to discourage workman from participating in Trade Union activity, is unfair labour practice, cannot be accepted since the said view is not supported by the clause 4 of Part-I of V schedule to the Industrial Disputes Act, 1947.

25. Likewise the reliance on clause 1 of the Vth schedule to the Industrial Disputes Act, 1947 by this Court in I. Srinivas Rao (supra) to hold that it would be "unfair labour practice" cannot be sustained. The said clause states:

"Unfair Labour Practices

1. On the part of employers and Trade Unions of employers-1. To interfere with, restrain from, or coerce, workmen in the exercise of the right to organise, form, join or assist a Trade Union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say:

(a) threatening workmen with discharge or dismissal, if they join a Trade Union;

(b) threatening a lock-out or closure, if a Trade Union is organised;

(c) granting wage increase to workmen at crucial periods of Trade Union organisation, with a view to undermining the efforts of the Trade Union organisation.

2. To dominate, interfere with or contribute support, financial or otherwise, to any Trade Union, that is to say:

(a) an employer taking an active interest in organising a Trade Union of his workmen; and

(b) an employer showing partiality or granting favour to one of several Trade Unions attempting to organise his workmen or to its members, where such a Trade Union is not a recognised Trade Union."

26. In I. Srinivas Rao (supra), it was held restraining the Badli Workers from participating in the verification process as members of a recognized registered Trade Union itself amounts to "Unfair Labour Practice" and relied on the above provision of Clause- 1.

27. In my opinion none of the above clauses is also attracted to classify the act of the management in opposing inclusion of Senior Technical Officers as "workmen" in the voters list for the secret ballot to be conducted to determine the majority union of 3rd respondent as per the Code of Discipline, as an act of "unfair labour practice". So the decision in the said case also does not represent the correct legal position.

28. In I. Srinivas Rao (supra) the decision in Management of APSRTC, Hyderabad (supra) was also not noticed.

29. Therefore I am not inclined to follow the decisions in *I. Srinivas Rao (supra)* and *Panyam Cements Employees" Union (supra)*.

30. In *Indian Leaf Spring Kamgar Union (supra)*, although this Court accepted that the Code of Discipline is non-statutory, the Court held that the Writ Petition was maintainable on the ground that the Assistant Commissioner of Labour, Andhra Pradesh, Hyderabad had been appointed as a Verification Officer to conduct verification of membership of eligible Trade Union in the said company under the Code of Discipline for the purpose of recognition by the management by Commissioner of Labour, Andhra Pradesh, Hyderabad. From this the Court concluded that the Assistant Commissioner of Labour was appointed by the Commissioner through an official order; that the Commissioner had issued the appointment order under the banner of Government of AP, Labour Department; they were not acting in their individual capacity except in the legal garb of official status on behalf of the Government of Andhra Pradesh through the Labour Department; the communication of the appointment of the Assistant Commissioner of Labour for the above purpose has to be treated as a public document within the meaning of Section 74 of the Indian Evidence Act, 1872 and a presumption under Section 114 of the Evidence Act that such act is an official act having the garb of statutory force, has to be drawn. With great respect to the learned Judge, the source of power having been found to be non-statutory, the Writ Petition ought to have been dismissed as not maintainable. Merely because the Commissioner of Labour, Government of AP, had issued the communication appointing Assistant Commissioner of Labour as the Verification Officer to conduct the secret ballot, it cannot be said that the latter is acting officially under a statute. This judgment is also rendered in ignorance of the decisions of in *HMT Employees" Union (supra)* and the decision in *All India Reserve Bank Employees" Federation (supra)* and has to be held to be per incuriam.

31. Although the counsel for the petitioner contended that in view of the conflict between the decisions in *HMT Employees" Union (supra)*, *All India Reserve Bank Employees" Federation (supra)* and *Management of APSRTC, Hyderabad (supra)* on the one hand and the decisions in *Panyam Cements Employees" Union (supra)*, *I. Srinivas Rao (supra)* and *Indian Leaf Spring Kamgar Union (supra)*, this Court ought to refer the issue of maintainability of Writ Petition to a Larger Bench, I am unable to agree with the said submission.

32. I have already given detailed reasons why the decisions in *Panyam Cements Employees" Union (supra)*, *I. Srinivas Rao (supra)* and *Indian Leaf Spring Kamgar Union (supra)* cannot be considered to be good law.

33. In *Union of India (UOI) and Others Vs. R.P. Singh, ,* the Supreme Court held that if a decision has been rendered per incuriam, a Court can ignore it. It followed the seven Judge Bench judgment of the Supreme Court in *A.R. Antulay Vs. R.S. Nayak and Another*, and the decision in *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, .* Several judgments of the apex court have been considered in the latter judgment and it was reiterated that a decision of

the Supreme Court which did not consider a Constitution Bench judgment of the said court would be per incuriam and the Constitution Bench judgment should be followed and not the decision which ignored it.

34. The counsel for the petitioner however relied on G.L. Batra Vs. State of Haryana and Others, and contends that this Court has no option but to refer to the matter to a larger Bench and ought not to declare that the decision of a co-ordinate Bench to be per incuriam. In the said case, a Division Bench of the Punjab and Haryana High Court overruled the judgment of a learned single Judge which was affirmed by another Division Bench in Letters Patent Jurisdiction. This was not approved by the Supreme Court which observed that if the latter Division Bench disagreed with the view of the learned single Judge, which had been affirmed by a previous Division Bench, the latter Division Bench should have referred the matter to a larger Bench. In my opinion, this case is not an authority for the proposition that a decision rendered in ignorance of a prior judgment cannot be treated as per incuriam and still has to be followed. From the facts narrated therein, it is clear that the existence of an earlier judgment of the learned single Judge having been approved by a Division Bench, was brought to the notice of the latter Division Bench, but still the latter Division Bench went ahead and disagreed with the view of the earlier Division Bench. Such is not the position here.

35. Admittedly, the earlier decisions in HMT Employees Union (supra) and All India Reserve Bank Employees Federation (supra) were not brought to the notice of this Court when it rendered Indian Leaf Spring Kamgar Union (supra), Panyam Cements Employees Union (supra) and I Srinivasa Rao (supra). Therefore, the latter judgments are clearly per incuriam and cannot be said to be binding.

36. For the above reasons, I am of the opinion that since the order dt. 08.10.2014 was passed by the 2nd respondent in his capacity as a returning Officer for the conduct of secret ballot election to determine the majority Trade Union in the 3rd respondent-Industry under the Code of Discipline is as per the "Procedure for Verification of Membership of Unions for the purpose of recognition under the Code of Discipline", and since the Code of Discipline is non-statutory, a Writ Petition questioning the same is not maintainable. It is open to the aggrieved parties to approach a Civil Court challenging the same.

37. Therefore, granting liberty to the petitioner-Union/other aggrieved parties to approach the civil court questioning the impugned order dt. 08.10.2014, the Writ Petition is dismissed. No costs.

38. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.