_

*THE HONBLE SRI JUSTICE P.S. NARAYANA

+ WRIT PETITION No.17846 of 2007

%Dated 23-08-2007

# The Indian Airports Kamgar Union,
Regdn.No.3950, Begumpet,
Hyderabad Airport,
Represented by its General Secretary,
GA Rudrappa s/o late Gangaiah, aged
47 years, 0cc. Sr.Supdt.(FS()
R/o Hyderabad. .. Petitioner

VERSUS

$ The Govt. of India,
Ministry of Labour & Employment
Rep.by its Desk Officer,
Shram Shakthi Bhavan,
Rafi Marg, New Delhi-110 001
& Anr. . … Respondents

! Counsel for the petitioner: Mr. P. Sridhar Rao (3824)

^Counsel for Respondents: Mr.A.Rajasekhar Reddy,
Asst.Solicitor General,
Sri Batula Rajkiran

<GIST:

> HEAD NOTE:

? Cases referred:

1) AIR 1989 SC-1565

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH**
**AT HYDERABAD**
(*Special Original Jurisdiction*)

-

FRIDAY, THE SIXTEENTH DAY OF NOVEMBER
TWO THOUSAND AND SEVEN.

P R E S E N T

**THE HON'BLE SRI JUSTICE P.S. NARAYANA**
* * *

WRIT PETITION No. 17846 of 2007

**Between:**

**The Indian Airports Kamgar Union,**
**Regdn.No.3950, Begumpet, Hyderabad Airport,**
**Represented by its General Secretary,**
**GA Rudrappa s/o late Gangaiah,**
**Aged about 47 years, 0cc. Sr.Supdt. (FS)**
**R/o Hyderabad. . ... Petitioner**

**Versus**

**The Govt. of India,**
**Ministry of Labour & Employment,**
**Represented by its Desk Officer,**
**Shram Shakthi Bhavan,**
**Rafi Marg, New Delhi-110 001 & Anr. ... Respondents**

**Counsel for the Petitioner: Sri P. SRIDHAR RAO (3824)**

**Counsel for the Respondents:** **Sri A.Rajasekhar Reddy**
**Asst.Solicitor General**
**Sri Batula Raj kiran**

O R D E R :

Heard Sri P.Sridhar Rao, the learned counsel representing the writ petitioner and Sri Bathula Raj Kiran, the learned counsel representing the first respondent and Sri Madan Mohan Rao, the learned counsel representing the second respondent.

2. Sri Sridhar Rao representing the writ petitioner placed strong reliance on the decision of the Apex Court in **TELCO CONVOY DRIVERS MAZDOOR SANGH AND ANR. V/s. STATE OF BIHAR AND ORS** [1], and would maintain that in the light of the same, the order of rejection is bad in law.

3. Sri Bathula Kiran filed a memo before this Court and would maintain that in the light of the facts and circumstances, this Court may make appropriate orders especially in the light of the memo filed by the first respondent.

4. Sri Madan Mohan Rao, representing the second respondent had taken this Court through the averments made in the counter-affidavit and would

[1] ) AIR 1989 SC-1565

submit that this is not a fit case for reference and hence the rejection made is well justified.

5. Heard the counsel on record and perused the material placed on record by the respective parties.

6. The writ petition is filed for a writ of mandamus, declaring the Lr.No.L-11011/3/2007-IR(M) dated 09-7-2007 of the first respondent in refusing to refer the dispute for adjudication to the appropriate forum on the ground that "Revision of OTA for Airport Authority of India is a policy issue and the Union i.e., Indian Airports Khamghar Union, Hyderabad, who have raised the dispute is not majority union" as arbitrary, illegal, contrary to law and also in violation of Articles 14 and 21 of the Constitution of India and consequently to direct the first respondent to refer the dispute to the appropriate forum for adjudication in the interest of justice and fair play and to pass such other suitable orders.

7. It is stated that the petitioner union had raised a dispute before the Regional Labour Commissioner (Central)-cum-Conciliation Officer at Hyderabad

with regard to the demand made vide chartered of demands dated 24-1-1997 before the second respondent including the demand of over time wages as per the provisions of Factories Act/Minimum Wages Act to all the Workmen with effect from 01-01-1989, since the second respondent was paying O.T. wages which was less than the statutory minimum wages and also contrary to the various beneficial legislations, before the Regional Labour Commissioner, Hyderabad, the petitioner union has made an elaborate application dated 14-7-2006. In pursuance of the said application, the Regional Labour Commissioner, Hyderabad made all his efforts for settlement of disputes amicably but the efforts were ended in failure vide his report no.8/43/2006-IB, dated 09-4-2007.

8. It is also stated that the first respondent could have referred the dispute to the appropriate forum for adjudication but entering into merits refusing to refer the dispute by impugned order is erroneous.

9. In the light of the facts and circumstances, it is stated that the writ petitioner is left with no other option except approach this Court by invoking Article 226 of the Constitution of India.

10. The first respondent filed a memo before this Court and; the said memo reads as hereunder:

**MEMO FILED BY THE RESPONDENT NO.1**.

> It is submitted that the above writ petition filed by the petitioner questioning the Lr./No.L-11011/3/2007-IR (M), dated 09-7-2007 and the said writ petition came up for hearing on 15-11-2007. After hearing the matter, the learned Judge posted the matter today i.e., 16-11-2007. I am the counsel for the first respondent and I am submitting a letter issued by the first respondent in F.No.L-11012/3/2007-IR (M) dated 18-10-2007 wherein it was stated that "the respondent would abide by the decision of the Hon'ble High Court in this matter, since no vires of the ID Act have been challenged". Hence, filing this memo may be pleased to consider.

11. The second respondent filed counter-affidavit. In para no.4 of the counter-affidavit, it is stated that the conciliation proceedings before the learned Regional Labour Commissioner (Central), Hyderabad, pursuant to the application dated 14-7-2006 filed by the petitioner, ended in failure, as reported in communique no.8/43/2006-IB dated 09-4-2007 by the RLC (c), Hyderabad.

In the petition dated 14-7-2006 the petitioner union raised to have demanded over time wages as per the provisions of Factories Act and Minimum Wages to all workmen w.e.f., 01-01-1989. It was submitted on behalf of the respondent no.2 in the conciliation proceedings that as per the charter of demands submitted on 24-1-1997 by the petitioner, the rates of over time wages were enhanced by 50% w.e.f. 25-2-2007. The management further streamlined the rates of OTA after discussing with the recognized union on 19-2-2007 and the issue is settled now and again it is being demanded now by the union for its own reasons. The Revision of OTA and Minimum Wages purely involves policy decisions. As the petitioner union did not enjoyed the status of recognized union, no policy matter was discussed with it any more. The RLC (C) Hyderabad, after careful perusal of documents filed before it by both the sides and after due perception of the submissions made by the parties, as there is existing dispute, rightly rejected the reference to Labour Court. The conciliation proceedings was

therefore rightly declared as failure and refused to be referred for further adjudication.

12. Further it is stated that the Indian Airports Kamgar Union, the petitioner in the instant case is not enjoying the status of recognized union and no policy issues were discussed with the unrecognized union. Therefore, the ID raised by the petitioner union had no merit and the request of the petitioner was untenable in law. The RLC (C) Hyderabad was justified in deciding failure of conciliation proceeding and rejecting further reference of the matter for adjudication. More over, it was only denied and there is no dispute to be referred for adjudication.

13. Further it is stated that the petitioner has no basis for its submission for adjudication of an issue, which is ***Inon est culpabilis.*** The petitioner was a recognized union when it raqised the ID in January 1997. The respondent considered and discussed the issues with it and accordingly policy decisions were adopted and implemented for the revision of OTA. Thereafter, the

petitioner lost the referendum and forfeited its right to be a part in any discussion relating to any policy decision for any matter. This right of collective bargaining is exclusively reserved to the recognized union. It is highly improper on part of the petitioner to pursue an issue where it has no leg to stand. As the said issue is settled with respective recognized unions, the question of reference does not arise.

14. In the light of the specific stand taken in the counter-affidavit of second respondent, it is stated that the writ petition being devoid of merits the same is liable to be dismissed.

15. The Apex Court in **TELCO CONVOY DRIVERS MAZDOOR SANGH AND ANR. V/s. STATE OF BIHAR AND ORS**, supra-1, at paragraph nos.11 to 16 observed as hereunder:

> *11. It is true that in considering the question of making a reference under Section 10(1), the Government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended", as urged by Mr. Shanti Bhusan. The formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. In the instant case, as already stated, the dispute is as to whether the convoy drivers are employees or*

*workmen of TELCO, that is to say, whether there is relationship of employer and employees between TELCO and the convoy drivers. In considering the question whether a reference should be made or not, the Deputy Labour Commissioner and/or the Government have held that the convoy drivers are not workmen and, accordingly, no reference can be made. Thus, the dispute has been decided by the Government which is, undoubtedly not permissible.*

*12. It is, however, submitted on behalf of TELCO that unless there is relationship of employer and employees or, in other words, unless those who are raising the disputes are workmen, there cannot be any existence of industrial dispute within the meaning of the term as defined in Section 2(k) of the Act. It is urged that in order to form an opinion as to whether an industrial dispute exists or is apprehended, one of the factors that has to be considered by the Government is whether the persons who are raising the disputes are workmen or not within the meaning of the definition as contained in Section 2(k) of the Act.*

*13. Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power under Section 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10 of the Act. See Ram Avtar Sharma v. State of Haryana, (1985) 3 SCR 686 : (AIR 1985 SC 915) ; M.P. Irrigation Karamchari Sangh v. State of M.P., (1985) 2 SCR 1019 : (AIR 1985 SC 860) ; Shambu Nath Goyal v. Bank of Baroda, Jullundur, (1978) 2 SCR 793: (AIR 1978 SC 1088).*

*14. Applying the principle laid down by this Court in the above decisions, there can be no doubt that the Government was not justified in deciding the dispute. Where, as in, the instant case, the dispute is whether the persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function under Section 10(1) of the Act. As has been held in M.P. Irrigation Karamchari Sangh's case (supra), there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse*

*or frivolous and do not merit a reference. Further, the Government should be very slow to attempt an examination of the demand with a view to declining reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of the valid disputes, and that to allow the Government to do so would be to render Section 10 and Section 12(5) of the Act nugatory.*

*15. We are, therefore, of the view that the State Government, which is the appropriate Government, was not justified in adjudicating the dispute, namely, whether the convoy drivers are workmen or employees of TELCO or not and, accordingly, the impugned orders of the Deputy Labour Commissioner acting on behalf of the Government and that of the Government itself cannot be sustained.*

*16. It has been already stated that we had given one more chance to the Government to reconsider the matter and the Government after reconsideration has come to the same conclusion that the convoy drivers are not workmen of TELCO thereby adjudicating the dispute itself. After having considered the facts and circumstances of the case and having given our best consideration in the matter, we are of the view that the dispute should be adjudicated by the Industrial Tribunal and, as the Government has persistently declined to make a reference, under Section 10(1) of the Act, we think we should direct the Government to make such a reference. In several instances this Court had to direct the Government to make a reference under Section 10(1) when the Government had declined to make such a reference and this Court was of the view that such a reference should have been made. See Sankari Cement Alai Thozhiladar Munnetra Sangam v. Govt. of Tamilnadu, (1983) 1 Lab LJ 460; Ram Avtar Sharma v. State of Haryana, (1985) 3 SCR 686 : (AIR 1985 SC 915); M. P. Irrigation Karamchari Sangh v. State of M. P., (1985) 2 SCR 1019: (AIR 1985 SC 860); Nirmal Singh v. State of Punjab, (1984) 2 Lab LJ 396 : (AIR 1984 SC 1619).*

16. In the light of the facts and circumstances, this Court is not inclined to express any opinion relating to the other merits and demerits of the principal

question in controversy. In the light of the memo filed by the first respondent and also in the light of the views expressed by the Apex Court in the decision referred supra-1, this Court is of the considered opinion that the rejection recording certain reasons touching the merits and demerits of the matter may not be justified in the facts and circumstances of this case. Hence, in the light of the same, the writ petition is hereby allowed and the first respondent is directed to make a reference in accordance with law, within a period of two months from the date of receipt of a copy of this order. No costs.

*JUSTICE P.S.NARAYANA.*
*16/11/2007.*

LR COPY TO BE MARKED.
B/o ISL.

**NB** :

Furnish CC of the order in two days.

B/o. I s L