

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) No. 26 of 2008

Reserved on: 29th January 2010

Decision on: 3rd March 2010

RAIL COACH FACTORY MEN'S UNION Petitioner
Through: Dr. Aman Hingorani, Advocate.

versus

UNION OF INDIA Respondent
Through: Mr. Bijender Singh, Advocate.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether reporters of the local news papers
be allowed to see the order? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the order should be reported in the Digest? | Yes |

JUDGMENT

1. The Petitioner is a trade union of workers at the Rail Coach Factory (RCF), Kapurthala duly registered under the Indian Trade Unions Act, 1926 (hereinafter “TU Act”) under Registration No.56 of 1988. The Petitioner is affiliated to the All India Railwaymen’s Federation (AIRF), New Delhi as also to the Hind Mazdoor Sabha, Mumbai.

2. The Petitioner is aggrieved by the action of the Respondent, Ministry of Railways, in excluding the Petitioner union from the secret ballot to ascertain which union be granted recognition as a Railway Trade Union. By this writ petition while seeking a writ of mandamus to the Ministry of Railways to recognise registered trade unions representing employees of Railway Production Units (RPU), the Petitioner also seeks a direction to the Respondent “to extend to the RPU the application of Modalities published on 9.10.2007 for conducting ‘Secret Ballot’ for the purpose of

granting recognition to the Railways Trade Unions”.

3. The petitioner states that the Indian Railway Code for Mechanical Department (Workshops) has specific provisions concerning Railway Production Units. In terms of the said Code, RPU's are treated on par with “Mechanical Departments (Workshops)”. Clause 1302 of Chapter XIII of the Code makes it clear that the provisions of the Code that apply to Workshops (such as organisational set up, labour etc.) apply *mutatis mutandis* to RPU's. It is pointed out that by Circulars dated 28th August 1997 and 15th September 1997 the Ministry of Railways has granted facilities to the All India OBC's Railway Employees Association and All India Railway SC/ST Railway Employees Association in the RPU's to take up the grievances of their members with the Railway management.

4. The petitioner states that a Joint Consultative Machinery (JCM) has been set up since 1966 in all central government ministries and departments including the Railways. All regular civil employees of the Central Government except the Class I and Class II services, other than Central Secretariat Services and other comparable services in the headquarters' organisation of the central government were to be included in the JCM. Clause 2 of the Scheme for the JCM provided that it would “supplement, and not replace the facilities provided to employees to make individual representations, or to associations of employees to make representations on matters concerning their respective constituent services, grades etc.” The Respondent by a circular dated 8th September 2003 set up a three-tier permanent negotiation machinery (PNM) to

redress the grievances of the Railway Protection Force (RPF) personnel. It was only a recognized Railway Trade Union which could participate in negotiations with the Railway management either in the JCM or in the PNM.

5. The AIRF which has been espousing the cause of the employees in the RPU's wrote to the Member (Staff) of the Railway Board on 5th May 2004 pointing out that the JCM did not exclude railwaymen working in the RPU's. It was submitted that the Staff Councils in the RPU's, which had been formed pursuant to the notice dated 12th April 1993, had been ineffective in dealing with the violations of the provisions of Minimum Wages Act, 1948 and the Contract Labour (Regulation & Abolition) Act, 1970 being perpetuated in the RCF, Kapurthala. It would therefore not be correct to deny recognition to the Petitioner union only on the ground that there was a Staff Council in place at the RCF at Kapurthala.

6. The provocation for the above letter was that instructions had been issued by the Railways on 26th June 2002 to consider the applications by the affiliates of the Bharat Rail Mazdoor Sangh (BRMS) and others for grant of recognition. It was stipulated that for grant of such recognition the concerned union should fulfill the conditions of at least 30% membership of the non-gazetted employees they seek to represent as well as certain other conditions. These instructions were challenged by the Southern Railway Mazdoor Union in WP No.25274 of 2002 in the Madras High Court. By a judgment dated 17th October 2003 the High Court set aside the instructions dated 26th June 2002. Referring to the

judgment of the Supreme Court in *FCI Staff Union v. FCI 1995 Supp (1) SCC 678*, the High Court concluded that the only feasible and reliable way of testing the strength of a trade union was to adopt the secret ballot system and to give up the present system of annual return. While the AIRF was ready to accept the secret ballot system, the National Federation of Indian Railways (NFIR) was not. The order of the High Court of Madras was further challenged in the Supreme Court. By its decision dated 8th March 2004, the Supreme Court dismissed the special leave petition upholding the decision of the Madras High Court. It was pointed out in the letter dated 9th June 2004 by the Adviser, Indian Railways (IR) to the General Secretary, AIRF that further action for adoption of 'Secret Ballot' in compliance with the High Court's direction, was required to be initiated. Consequently a meeting with the staff side was fixed for 21st June 2004.

7. The Petitioner on 28th July 2004 addressed a letter to the Adviser (IR) stating that the Staff Council at the RCF be immediately dissolved and the judgment of the Supreme Court be implemented without delay. It was pointed out that the denial of recognition to the Petitioner as a trade union was no longer justified. The Petitioner persisted with its demands by letter dated 8th July 2006.

8. In the meanwhile, a Secret Ballot Committee of the Respondents was constituted to finalise the modalities to conduct a secret ballot for recognition of trade unions. The views of all registered trade unions were solicited by the Chairman of the Secret Ballot Committee. In response

thereto, on 9th June 2007, the Petitioner forwarded its response to the said Committee. On 20th September 2007, the Petitioner sought the inclusion of the RPU's in the proposed modalities for secret ballot for recognition of trade unions. By its circular dated 9th October 2007 addressed to all the General Managers of Indian Railways except the RPU's, the Ministry of Railways published the modalities announcing the schedule for holding the secret ballot from 26th November 2007 to 28th November 2007. Consequently the secret ballot was held for all the Indian Railways except the RPU's. It is this that has prompted the Petitioner to file the present petition on 2nd January 2008.

9. In its response to the present petition, the Ministry of Railways has contended that the management of the RPU's was satisfactory and the Staff Councils set up pursuant to a policy decision of the Government of India taken in the year 1954, which as regards the RPU's was approved in the year 1967, was functioning satisfactorily. One post of Zonal Secretary belonging to each recognized federation at the production units was created in the Staff Council. A reference is made to the composition of Staff Council as given in para 2603 of Chapter XXVI, Section I of Indian Railways Establishment Manual, Volume II (Revised Edition), 1990 [hereinafter "IREM"]. The issue of holding election by secret ballot is admitted to have emerged as a result of the orders passed by the Madras High Court as referred to hereinbefore. It is submitted that even in this Court in Writ Petition (Civil) No.23873 of 2005, a direction had been issued to the Ministry of Railways for holding a secret ballot for recognition of trade unions. That order was upheld by the dismissal on

22nd March 2007 of LPA No.23 of 2007 by the Division Bench. The modalities framed for conducting the secret ballot were also upheld by the order passed by a learned Single Judge in Writ Petition No.7840 of 2007.

10. According to the Ministry of Railways there is no vested right in the Petitioner to seek recognition. It is claimed that the Respondent is well within its powers to decide as a matter of policy that Staff Councils would be the only mechanism of grievance redressal of the employees in the RPU's and not trade unions. It is pointed out that the policy decision was that while Staff Councils functioning in the Zonal Railways should be abolished, they should be continued in the RPU's, and that unions should not be recognised in the RPU's. This policy decision is further explained as under:-

“In case, unions are recognized in Production Units, these unions would demand representation in the Department Council of JCM as well as National Council. Since the number of representatives of the staff side in both the fora is limited, representation to unions of Production Units would be at the cost of Members of the Federations, which would not be acceptable to the Federation.

If the system of recognized unions in Production Units is allowed, although the staff of Production Units consists of around 3% of the total staff strength of Indian Railways, in all the major decisions, it may become necessary to associate unions of Production Units along with Federations. At present the decisions taken for Zonal Railways is equally binding on Production Units. This is possible because there are no recognized unions in Production Units and as such there is no opposition to the decision taken with Federations.”

11. In the rejoinder it is pointed out by the Petitioner that it was incorrect to state that the Staff Council was functioning efficiently. It is pointed out that by circular dated 10th January 2006, the Members of the Staff Council at RCF, Kapurthala tendered their resignation *en bloc* protesting against “the apathetic and indifferent attitude adopted by the RCF Administration to solve the most genuine and legitimate demands of the employees”. It is further pointed out that although the JCM envisaged a three-tier machinery, i.e., National, Departmental and Office/Regional Council, the third tier of the JCM Scheme in the RPU was not operationalised. Notwithstanding the consistent demand by even the federations, the Railways were maintaining that the demand was not feasible for acceptance. It is contended that not only is the Staff Council not a substitute for a railway trade union but the Staff Council system itself stands abolished for the rest of the Railways and its working has been recorded to be improper and leading to industrial unrest. It is submitted that there are around 7200 Group C and D staff at the RCF, Kapurthala who constitute the Petitioner union. They have a fundamental right to form a trade union and to participate through secret ballot in the JCM and take the benefit of collective bargaining. Moreover, it is pointed out that the Staff Council is merely an advisory body headed by gazetted officers nominated by the General Manager, and whose constitution, composition and rules are at the discretion of the General Manager and subject to directives of the Respondent.

12. By an additional affidavit dated 25th January 2010, the Respondents have sought to clarify the basis of the policy for provision of Staff

Council at the RCF, Kapurthala. A copy of the minutes of the Cabinet Meeting held on 26th May 1967 has been placed on record. Further reference is made to a letter dated 5th October 1994 written by the Chief Personnel Officer, RCF, Kapurthala to the Executive Director (IR) Railway Board in which it was opined that “for good industrial relations, greater participation of labour in management and for proper response from labour, institution of Staff Council should be made more effective which can be easily done within the framework of existing rules and procedures and bringing in recognized unions is in no way in the interest of the Organization and will be totally counter-productive.”

13. A reference is also made to letters dated 17th January 1994 and 9th January 1998 of the Ministry of Railways addressed to the General Managers of the Zonal Railways reiterating that the practice of having retired railway personnel continuing to be elected central office bearers of recognized unions should not be permitted, and that younger elements should be encouraged to take charge of the union.

14. The opposition of the Respondents to extending to the RPU's the application of the Modality published on 9th October 2007 which in turn would permit the petitioner unit to participate in the secret ballot for grant of recognition of the Petitioner as a railway trade union does not appear to this Court to have any legal basis.

15. Part C of the IREM sets out the conditions precedent to the recognition of a union by the Railway administration. One is that the

union must be registered under the TU Act. The second is that the union should agree that “all representations from them must be through the Central Executive Committee to the General Manager and representations from branches of the Union must also be made only through the Central Executive Committee.” However, it is open to the Railway administration by agreement with the union to arrange for matters relating exclusively to one department to be referred direct to the head of that department and for matters of purely local interest to be referred by a branch of the union to a Divisional or District Officer for discussion. The Petitioner fulfills both conditions. In its reply to this assertion, it is sought to be contended that the IREM does not create any right in favour of the Petitioner “much less a right enforceable by way of the issuance of a writ of mandamus by this Court.” There is absolutely no provision of the IREM pointed out by the Respondents whereby despite a union satisfying the conditions of Part C of the IREM it can be denied recognition.

16. It is settled law that while there does exist under Article 19 (1)(c) of the Constitution of India a fundamental right to form a union, the imposition of conditions for recognition would not per se be viewed as an unreasonable restriction within the meaning of Article 19 (4). (See *Kulkarni Raja v. State of Bombay AIR 1954 SC 73*, *Raghubar Dayal Jai Prakash v. Union of India AIR 1962 SC 263* and *Delhi Police N.G.K. Sangh v. Union of India AIR 1987 SC 379*). However, it would still be open for examination if outside the scope of the statutory framework, in the form of rules for recognition, a union in one part of the

establishment (i.e. the RPU) can be subject to a differential treatment as regards the conditions for recognition. That in fact is the petitioner's grievance here. While it is willing to submit to the conditionalities for recognition, it is aggrieved by the threshold bar imposed on not being even allowed to participate in the process that would enable it to seek recognition. The grievance is about being subject to a discrimination that is impermissible in terms of Article 14 of the Constitution.

17. The IREM brings about no distinction between the unions in RPUs and other establishments within the Railways. Unless such a restriction is spelt out in the IREM itself, subject to such restriction being tested for its reasonableness, the petitioner union which is a union in an RPU, cannot be discriminated against. In other words, absent a specific restriction spelt out in the IREM, the petitioner union cannot be refused participation in the secret ballot for the purpose of recognition. The only distinction drawn by the Respondent between RPUs and other workshops is that "since product profile of Production Units, their functioning and establishments are quite different from Zonal Railways the composition, organisational structure and functioning of staff councils have also been kept different and separate from Zonal Railways recognized unions." This can hardly constitute a rational basis on which to discriminate against unions in RPUs by excluding them from the applicability of the Modalities set down by the circular dated 9th October 2007. Also, such classification of unions in RPUs separately from other unions, which classification is on the face of it suspect, has no reasonable nexus with the object of ensuring that only truly representative trade unions are

recognised for participation in the JCM. The denial to the petitioner the right to participate in the secret ballot for determining whether it should be accorded recognition cannot be sustained on the touchstone of Article 14 of the Constitution.

18. The IREM, insofar as it makes provisions for recognition of trade unions in the Railways, can be said to supplement the provisions of the TU Act. Therefore, both the TU Act and the relevant provisions of the IREM have to be read in consonance with Article 19(1) (c) and 19(4) and Article 14 of the Constitution. This is the constitutional legislative framework within which the rights of the Petitioner to form a union and to seek recognition have to be found. The power of the Respondents to deny the Petitioner union the right to participate in the secret ballot as a preliminary step towards recognition must likewise be traced to some provision in the IREM itself which in turn must be in conformity with the constitutional scheme of Articles 14, 19 (1) (c) and 19 (4). The respondents have not been able to point out any such provision.

19. The only reason put forth by the Respondent to deny recognition is that there is a Staff Council in the RCF at Kapurthala which can be a substitute for a recognized trade union. The reliance placed by the Respondent on the decision taken by the Union Cabinet on 26th May 1967 is misplaced. That decision, taken more than 40 years ago, reads as under:

“(i) The Staff Councils already set up by the Ministries and Departments of the Government of India would be abolished as soon as Joint Councils under the Joint Consultative

Machinery start functioning at the Regional, Zonal and Office levels; and

- (ii) As regards the Railways, the Staff Councils would be retained in the three production units only, namely the Chittaranjan Locomotive Works, the Diesel Locomotive Works and the Integral Coach Factory; the Railway Board would examine further the question about the future set up, in due course. The Staff Councils functioning elsewhere, whether at the level of the Railway Board or at the levels of the Zonal Railways or of the Divisions of the Zonal Railways would be abolished.”

20. It is plain from the above decision that even at the time it was taken the Cabinet was conscious that “the Railway Board would examine further the question about the future set up, in due course.” Further, for RPU's, the review was to be on the issue whether even at the levels of the Zonal Railways or of the Divisions, the Staff Councils should be abolished. Therefore, far from supporting the decision to retain Staff Councils, the above Cabinet decision appears to indicate that the question of desirability of division of Staff Councils should be reviewed from time to time. As pointed out by the learned counsel for the Petitioner, the review committee for RCF at Kapurthala was not even set up.

21. The intention to not grant recognition to trade unions in the RPU's is not justified with reference to the above cabinet note. What emerges from the correspondence exchanged between the officers of the Railways is that it was their personal view that a Staff Council can substitute a trade union and that recognizing a trade union in a RPU, would not be in the interest of the Railways. This Court cannot be expected to treat the

personal views of individual officers as the policy decision of the Railways. In any event, such decision does not appear to have found expression in any specific provision of the IREM. The Respondents cannot seek to supplant the constitutional and legislative scheme by a so-called policy decision which finds no expression in the form of a statutory provision.

22. For all of the above reasons, this petition deserves to be allowed. A mandamus is issued to the Respondents to apply the Modalities spelt out in the circular dated 9th October 2007 to the RPU at Kapurthala and permit the Petitioner union to participate in the 'secret ballot' for determining which railway unions should be accorded recognition and consequently granted representation in the JCM.

23. The writ petition is accordingly allowed with costs of Rs.5,000/- which should be paid by the Respondents to the Petitioner within four weeks.

S. MURALIDHAR, J.

MARCH 3, 2010

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