

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

LPA 303 OF 2011
WRIT PET.(C) 4567 OF 2010
WRIT PET.(C) 4018 OF 2008

%

Judgment reserved on: 3.5.2012

Judgment pronounced on: 13.7.2012

(1) LPA 303/2011 & CM 6477/2011

DELHI VIDYUT KARAMCHARI UNION ... APPELLANT

Through: Mr. Sumit Kumar, Advocate.

VERSUS

NCT OF DELHI & ORS

... RESPONDENTS

Through: Mr. N. Wazir, Standing Counsel
(Civil) with Ms. Zeenat Masoodi,
Advocate for GNCTD.

Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Vishva Wadhwa, Advocate
for NDPL.

Mr. S. K. Dubey, Mr. Vivek,
Advocate for DTL.

Mr. Vinay Sabharwal, Advocate for
IPGCL.

Mr. B.K. Sinha, with Ms. Pratibha
Sinha, Advocate for R.2

Mr. S.N. Chaudhari, Advocate for
BSES RPL

Mr. Mohit Verma, Advocate for
BSES YPL.

Mr. V.K. Tandon, Advocate for
Labour Deptt.

Mr. K.C. Dubey, Advocate for
DESU Majdoor Sangh.

(2) W.P.(C) 4567/2010

DELHI VIDYUT KARAMCHARI UNION ... APPELLANT

Through: Mr. Sumit Kumar, Advocate.

VERSUS

NCT OF DELHI & ORS

... RESPONDENTS

Through: Mr. N. Waziri, Standing Counsel
(Civil) with Ms. Zecnat Masoodi,
Advocate for GNCTD.
Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Vishva Wadhwa, Advocate
for NDPL.
Mr. S. K. Dubey, Mr. Vivek,
Advocate for DTL.
Mr. Vinay Sabharwal, Advocate for
IPGCL.
Mr. B.K. Sinha, with Ms. Pratibha
Sinha, Advocate for R.2
Mr. S.N. Chaudhari, Advocate for
BSES RPL
Mr. Mohit Verma, Advocate for
BSES YPL.
Mr. V.K. Tandon, Advocate for
Labour Deptt.
Mr. K.C. Dubey, Advocate for
DESU Majdoor Sangh.

(3) W.P.(C) 4018/2008, CM 9378/2011

DELHI STATE ELECTRICITY WORKERS UNION

... APPELLANT

Through: Mr. Akhil Sibal, Mr. Rajesh Pathak
and Mr. Salim Amber Inamdar,
Advocates.

VERSUS

NCT OF DELHI & ORS

... RESPONDENTS

Through: Mr. N. Waziri, Standing Counsel
(Civil) with Ms. Zecnat Masoodi,
Advocate for GNCTD.

Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Vishva Wadhwa, Advocate
for NDPL.

Mr. S. K. Dubey, Mr. Vivek,
Advocate for DTL.

Mr. Vinay Sabharwal, Advocate for
IPGCL.

Mr. B.K. Sinha, with Ms. Pratibha
Sinha, Advocate for R.2.

Mr. K.C. Dubey, Advocate for
DESU Majdoor Sangh.

CORAM :-

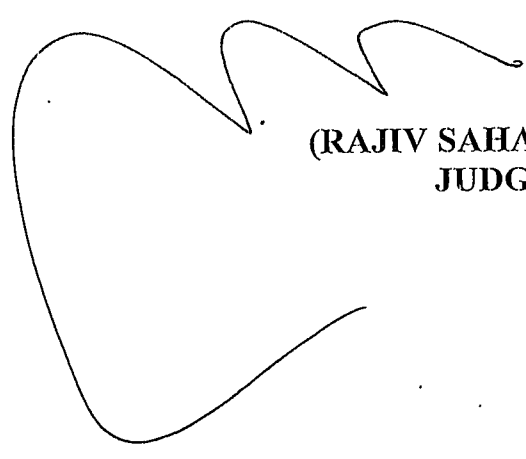
HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, ACTING CHIEF JUSTICE

For orders, see LPA 283/2011.


ACTING CHIEF JUSTICE


**(RAJIV SAHAI ENDLAW)
JUDGE**

JULY 13, 2012

skb

1-4

*
+
%

IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA 283 OF 2011
LPA 303 OF 2011
WRIT PET.(C) 4567 OF 2010
WRIT PET.(C) 4018 OF 2008

us

Judgment reserved on: 3.5.2012
Judgment pronounced on: 13.7.2012

(1) LPA 283/2011, CM 6127/2011, 9219/2011

DELHI STATE ELECTRICITY WORKERS UNION

... APPELLANT

Through: Mr. Akhil Sibal, Mr. Rajesh Pathak
and Mr. Salim Amber Inamdar,
Advocates.

VERSUS

NCT OF DELHI & ORS

... RESPONDENTS

Through:

Mr. N. Waziri, Standing Counsel
(Civil) with Ms. Zeenat Masoodi,
Advocate for GNCTD.

Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Vishva Wadhwa, Advocate
for NDPL.

Mr. B.K. Sinha, with Ms. Pratibha
Sinha, Advocate for R.2

Mr. S. K. Dubey, Mr. Vivek,
Advocate for DTL.

Mr. Vinay Sabharwal, Advocate for
IPGCI.

Mr. S.N. Chaudhari, Advocate for
BSES RPL

Mr. Mohit Verma, Advocate for
BSES YPL.

Mr. V.K. Tandon, Advocate for
Labour Deptt.

Mr. K.C. Dubey, Advocate for
DESU Majdoor Sangh.

yb

(2) LPA 303/2011 & CM 6477/2011

DELHI VIDYUT KARAMCHARI UNION ... APPELLANT
Through: Mr. Sumit Kumar, Advocate.

VERSUS

NCT OF DELHI & ORS

Through:

... RESPONDENTS

Mr. N. Waziri, Standing Counsel
(Civil) with Ms. Zeenat Masoodi,
Advocate for GNCTD.

Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Vishva Wadhwa, Advocate
for NDPL.

Mr. S. K. Dubey, Mr. Vivek,
Advocate for DTL.

Mr. Vinay Sabharwal, Advocate for
IPGCL.

Mr. B.K. Sinha, with Ms. Pratibha
Sinha, Advocate for R.2

Mr. S.N. Chaudhari, Advocate for
BSES RPL

Mr. Mohit Verma, Advocate for
BSES YPL.

Mr. V.K. Tandon, Advocate for
Labour Deptt.

Mr. K.C. Dubey, Advocate for
DESU Majdoor Sangh.

(3) W.P.(C) 4567/2010

DELHI VIDYUT KARAMCHARI UNION ... APPELLANT
Through: Mr. Sumit Kumar, Advocate.

VERSUS

NCT OF DELHI & ORS

Through:

...RESPONDENTS

Mr. N. Waziri, Standing Counsel
(Civil) with Ms. Zeenat Masoodi,
Advocate for GNCTD.

Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Vishva Wadhwa, Advocate
for NDPL.

Mr. S. K. Dubey, Mr. Vivek,
Advocate for DTL.

Mr. Vinay Sabharwal, Advocate for
IPGCL.

Mr. B.K. Sinha, with Ms. Pratibha
Sinha, Advocate for R.2

Mr. S.N. Chaudhari, Advocate for
BSES RPL

Mr. Mohit Verma, Advocate for
BSES YPL.

Mr. V.K. Tandon, Advocate for
Labour Deptt.

Mr. K.C. Dubey, Advocate for
DESU Majdoor Sangh.

(4) W.P.(C) 4018/2008, CM 9378/2011

DELHI STATE ELECTRICITY WORKERS UNION

...APPELLANT

Through: Mr. Akhil Sibal, Mr. Rajesh Pathak
and Mr. Salim Amber Inamdar,
Advocates.

VERSUS

NCT OF DELHI & ORS

Through:

...RESPONDENTS

Mr. N. Waziri, Standing Counsel
(Civil) with Ms. Zeenat Masoodi,
Advocate for GNCTD.

Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Vishva Wadhwa, Advocate

for NDPL.

Mr. S. K. Dubey, Mr. Vivek,
Advocate for DTI.

Mr. Vinay Sabharwal, Advocate for
IPGCL.

Mr. B.K. Sinha, with Ms. Pratibha
Sinha, Advocate for R.2.

Mr. K.C. Dubey, Advocate for
DESU Majdoor Sangh.

CORAM :-

**HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

A.K. SIKRI, ACTING CHIEF JUSTICE

1. These four separate proceedings, two Writ Petitions and two Letters Patent Appeals, have commonality of issues and therefore can be discussed, adjudicated upon and decided by this common judgment.
2. The Delhi State Electricity Workers Union (hereinafter referred to as the DSEWU) is the petitioner in Writ Petition (C) 4018/2008 and the appellant in LPA 283/2011. Writ Petition (C) 4567/2010 is filed by Delhi Vidyut Karmchari Union (Regd.) (hereinafter referred to as the DVKU). The DVKU is also the appellant in LPA 303/2011. The subject matter of these four proceedings is as under:-

The DSEWU has filed this appeal impugning the order dated 21.2.2011 passed by the learned Single Judge in Writ Petition 4763/2010 which was filed by the respondent no.2 i.e. NDPL Staff Association (hereinafter referred to as 'the Staff Association'). The Staff Association had filed this writ petition for conducting election for the purpose of grant of recognition to majority union restricted to the NDPL only. In this writ petition, the appellant DSEWU was not impleaded and was, therefore, not heard. The order dated 21.2.2011 was passed by the learned Single Judge directing the NDPL to conduct the election as prayed for by the Staff Association within three months. It's a brief order of one paragraph which reads as under:-

"The only relief sought in the writ petition is a direction to the respondents to conduct election for the purpose of grant of recognition to the majority of Trade Union in respondent No.2 Company. Learned Senior Counsel appearing for respondent No.2 states that the respondent is prepared to conduct the election.
In view of the above, respondent No.2 is directed to conduct election as prayed for within three months from today.
With this direction, the writ petition is disposed of."

The grievance of the DSEWU is that the order was passed without hearing the appellant which is the recognized majority union of workers

50

representing workers not only of NDPL but the entire industry supplying the power to NCT of Delhi of which five companies namely IPGCL, Delhi TRANSCO, NDPL, BRPL and BYPL form a part. These five companies (respondent no.3 to 7 in LPA) are the successors of the erstwhile Delhi Vidyut Board (DVB) which was reorganized as per the Delhi Reforms Act, 2000. It is claimed that the DSEWU was recognized by the DVB as majority union and has the right to seek this recognition by the NDPL as well on the basis of majority in the industry and it should not be restricted to NDPL alone.

Writ Petition (C) 4018/2008:

This petition is filed by the DSEWU claims the same relief based on specific plea that it was a recognized majority union in the erstwhile DVB and all the successors companies were bound to negotiate with this Union in good faith and also seeks quashing of letter dated 11.12.2007 issued by the Delhi TRANSCO Ltd. and Indraprastha Power General Co. Ltd. (IPGCL) as per which neither DVKU nor DSEWU was eligible to be recognized as majority union referring to the provision of Section 22 (2) of the Trade Union Act, 1926.

Writ Petition (C) 4567/2010

This petition is filed by DVKU seeking a writ/order/direction to the respondents therein, particularly the Chief Labour Commissioner Delhi to

51

hold elections by secret ballot to determine the majority character of the union functioning in the 5 companies, and further a mandamus to the five companies to recognize the union which would be declared as majority union. DSEWU, respondent no.8 in the said writ petition, has filed a reply, supporting the demand for determination of a recognized majority union across the five successor companies, as per the principle of "One Industry-One Union".

LPA 303/2011

This appeal arises out of the same orders dated 21.2.2011 passed by the learned Single Judge in Writ Petition (C) 4763/2010 making same plea as made by the DSEWU in LPA 283/2011.

3. From the gist of the aforesaid proceedings, it would be clear that the issue in all these cases is common namely after the incorporation of five successors companies of DVB, whether elections should be held "industry-wise" i.e. in respect of all the five establishment and any union which emerges as majority union 'industry-wise' should be given the recognition? It is for this reason, order dated 29.3.2011 was passed clubbing both the writ petitions as well as the LPAs to be heard together.

4. For the sake of convenience and without any fear of contradictions, we may take note of facts in LPA 283/2011 which was treated as the lead

52
case inasmuch as facts of this case would cover the factual position in other cases as well.

5. The DSWEU is a registered Trade Union and claims that it came into existence in the year 1947 and has been representing thousands of workers of the Delhi Electric Supply Undertaking which was later on converted into DVB. The DSWEU also boast that it has been representing the workers with various companies after the DVB was unbundled and has been recognized in various elections as a majority union with a sole and absolute right of collective bargaining with regard to the interest of the workers of erstwhile DVB. Last election for determining the majority character of the union in DVB has been conducted by the Registrar of Trade Unions in the year 1999 and thereafter there has been no election to determine the majority character of union working with DVB. Since then nobody has challenged the majority character of the DSWEU.

6. On 28.10.2000, Government of NCT of Delhi had formed a policy to restructure DVB for the purpose of restoring operational and financial viability, and to meet the future demand for sufficient supply of electricity. Since the employees, engineers and officers of DVB were apprehensive about their retrenchment/service conditions on restructuring, the government entered into the Tripartite Agreement with Delhi Vidyut

Board and Delhi Vidyut Board Joint Action Committee; which was notified by the Department of Power, Delhi on 16.1.2001.

In the year 2002, the DVB was unbundled into five successor companies under the Delhi Electricity Reforms Act, 2000 which took over the generation, transmission and distribution businesses that were earlier carried out by DVB. The new entities were : Indraprastha Power Generation Co. Ltd. (IPGCL) for the generation business, Delhi Transco Ltd. (DTL) for the transmission business, and BSES Yamuna Power Ltd. (BYPL), BSES Rajdhani Power Ltd. (BRPL) and North Delhi Power Ltd. (NDPL) [now renamed as Tata Power Delhi Distribution Ltd. (TPDDL)] for the distribution business. BRPL and BYPL are subsidiaries of the Reliance Group while TPDDL is a subsidiary of Tata Power Ltd., Delhi Power Corporation Ltd. (DPCL) was set up *inter alia* to take over some of the liabilities of DVB. The employees of erstwhile DVB who were earlier involved with the consolidated functioning of the electricity industry consisting of all the activities of generation, transmission and distribution have now been transferred to the successor companies mentioned above which are carrying out specific functions of generation, transmission or distribution.

54

7. It is clear that five separate companies are incorporated under the Indian Companies Act having their independent entities. After the incorporation these establishments want their affairs to be regulated independent of each other including service conditions of the employees. No doubt, the erstwhile employees of DVB were taken by these five establishments on the same terms and conditions of service with which they were governed by the DVB, according to them there is no embargo in laying down separate and different terms and conditions for the employees inducted by these companies of their own after 2000. According to the DSWEU it kept on negotiating with the five establishments for welfare collective bargaining of the workers of these five establishments who were/are its members and it shows that all these establishments had recognized the DSWEU. It is stated that some elections were conducted in the year 2004 in the Union where one Mr. Kuldeep Kumar, was elected as General Secretary. However, thereafter the Delhi TRANSCO and GENCO (IPGCL) stopped negotiating with the DSWEU and issued Circulars. Aggrieved by such attitude and circulars, the DSWEU filed W.P.(C).4018/2008 for direction to the GENCO and Delhi Transco Ltd. to negotiate with the DSWEU being recognized majority union. As pointed out above, DKU also filed W.P.(C) 4567/2010 for conduct of the election in all the five companies to determine the majority in all the five

companies cumulatively to determine the majority character in the industry and not establishment wise.

These facts are sufficient to determine the controversy and of course some other facts would be noticed while taking note of submissions of the various parties.

8. Circular dated 8.1.2007, the validity of which is challenged, mentions that neither DVKU nor DSEWU was eligible to be recognized as majority union because of the provisions of Section 22 (2) of the Trade Union Act. Challenging the stand taken in the said Circular, Mr. Sibal argued that a bare perusal of Section 22(2) clearly shows that the basis of the Letter dated 11.12.2007 and the circular dated 8.1.2007 is entirely erroneous. The said Section requires office bearers of the Union to be engaged or employed in the establishment or "industry" with which the Trade Union is concerned. It is submitted, that the statutorily necessary percentage of office bearers of DSEWU are engaged in or connected with the industry supplying electricity to the NCT of Delhi, being erstwhile employees of DVB. In any event, under the Trade Unions Act in the event of any violation of any of the provisions of the Act the Registrar is empowered to cancel the registration which is an appealable order as such any allegation that Section 22 is being violated is to be raised before the

56

Registrar for appropriate action and cannot be resorted to unilaterally by IPGCL and DTL without following any principles of natural justice to self-servingly declare that the appellant union is not adhering to Section 22. Further, by the Circular dated 8.1.2007 read with the letter dated 11.12.2007 IPGCL and DTL purport to exclude the appellant union from recognition on the ground that its members/office bearers are not employed by IPGCL/DTL. As such, the said circular and letter is in the teeth of Section 22 of the Trade Union Act and further amounts to an Unfair Labour Practice under the industrial Disputes Act and seek to negate entirely the right to collective bargaining at the level of industry.

9. Insofar as main issue pertaining to recognition of majority trade union across the industry is concerned, Mr. Sibal advanced the following propositions:-

- (i) In law, and in principle, there can be recognition of a majority trade union across an industry rather than only in respect of a constituent unit of such industry.
- (ii) Once the first proposition is accepted, it will depend on the facts and circumstances of a particular case and industry as to whether the appropriate bargaining unit for recognition of a trade union is the industry as a whole or a constituent thereof or both.
- (iii) The essence of trade union representation is collective bargaining. Consequently, the greater the collective, the

57

greater the bargaining power. As such, recognition of a majority union across an industry is to be preferred to recognition at the level of its constituent units.

- (iv) Industry, as a relevant and appropriate bargaining unit, finds some statutory recognition.
- (v) In the absence of a clear statutory mandate or prescription as to trade union recognition, it is left up to the courts to resolve disputes in this regard, and to enforce the right of workers to collective bargaining.
- (vi) Recognition of a trade union is a matter of right for workers and to some extent compulsion for the employer. It would be disastrous to leave the choice of recognition to the unfettered discretion of the employer as that would result in unfair labour practices.
- (vii) It is the right of workers to be represented by a majority union. To consider such majority character, the industry rather than the establishment is the preferable bargaining unit.
- (viii) In the facts and circumstances of this case the appropriate bargaining unit is the industry and not each constituent company.
- (ix) The common and collective interest of ex-DVB employees absorbed into the successor entities is evident from the Delhi Electricity Reforms Act, 2000 as also the Tripartite Agreement dated 16.1.2011. The power of Collective Bargaining across the five entities to protect this common interest is a natural corollary.

- 58
- (x) An election, under the supervision and direction of a Court appointed officer, should therefore be held across all five successor entities to identify and recognize the majority union across the industry.
 - (xi) If this Court feel that there should be additionally be recognition, in terms of the Code of Discipline, in respect of each successor entity, the appellant is not averse to the same provided there is an appropriate demarcation to avoid conflict.

10. He supplemented these submissions with legal propositions, arguing that collective bargaining by workers is an antidote to the inferior bargaining position of individual workers, in the employer-worker relationship in industry. His submission was that collective bargaining should be encouraged at industry level which was also the mandate of ILO and the spirit behind Trade Unions Act as well as Industrial Dispute Act. He referred to the judgment of the Supreme Court in *Food Corporation of India Staff Union Vs. Food Corp. of India* 1995 supp(1) SCC 678 wherein the Supreme Court had gone to the extent of calling 'collective bargaining' the *raison detre* of trade unions, observing as under:-

"...Collective bargaining is the principal *raison d'etre* of the trade unions. However, to see that the trade union, which takes up the matter concerning service conditions of the workmen truly represents the workmen employed in the establishment, the trade union is first required to get itself registered

59

under the provisions of Trade Unions Act, 1926. This gives a stamp of due formation of the trade union and assures the mind of the employer that the trade union is an authenticated body; the names and occupation of whose office bearers also become known. But when in an establishment, be it an industry or an undertaking, there are more than one registered trade unions, the question as to with whom the employer should negotiate or enter into bargaining assumes importance, because if the trade union claiming this right be one which has as its members minority of the workmen/employees, the settlement, even if any arrived between the employers and such a unions, may not be acceptable to the majority and may not result in industrial peace. In such a situation with whom the employers should bargain, or to put it differently who should be the sole bargaining agent, has been a matter of discussion and some dispute. The 'check off system' which once prevailed in this domain has lost its appeals; and so, efforts are on to find out which other system can foot the bill. The method of secret ballot is being gradually accepted. All concerned would, however, like to see that this method is so adapted and adjusted that it reflects the correct position as regards membership of the different trade unions operating in one and the same industry, establishment or undertaking.

11. Referring to another judgment of Supreme Court in *P. Virudhachalam Vs. Management of Lotus Mills*, (1998) 1 SCC 650 his submission was that the Supreme Court recognized in that case that individual workman had by themselves scant bargaining power and therefore their disputes had to be highlighted by their bargaining agents,

60

namely, their unions representing the body of workmen so that the bargaining power of individual workmen can get strengthened. In the said case, after taking note of various provisions of the Industrial Disputes Act, the Court described the principle of collective bargaining in the following manner:-

“9. It has to be kept in view that the Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. Thus principle of industrial democracy is the bed-rock of the Act. The employer or a class of employers on the one hand and the accredited representatives of the workmen on the other are expected to resolve the industrial dispute amicably as far as possible by entering into the settlement outside the conciliation proceedings or if no settlement is reached and the dispute reaches conciliator even during conciliation proceedings. In all these negotiations based on collective bargaining individual workman necessarily recedes in background. The reins of bargaining on his behalf is handed over to the union representing such workman. The unions espouse the common cause on behalf of all their members. Consequently, settlement arrived at by them with management would bind at least their members and if such settlement is arrived at during conciliation proceedings, it would bind even non-members. Thus, settlements are the live wires under the Act for ensuring industrial peace and prosperity. Section 10(2) of the Act highlights this position by providing that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the

61

majority of each party, shall make the reference accordingly. Individual workman comes into the picture only in connection with a limited class of industrial disputes as indicated by Section 2A of the Act dealing with discharges, dismissals, retrenchments or otherwise termination of services of an individual workman. Save and except the aforesaid class of disputes, which an individual workman can raise, rest of the industrial disputes including disputes pertaining to illegal lock out, lay-off and lay-off compensation have to be filtered through the process of collective bargaining and they are disputes of general nature or class disputes wherein individual workman by himself has no say. In this connection, it is profitable to keep in view a decision of three-member Bench of this Court in the case of Ram Prasad Vishwakarma v. Chairman Industrial Tribunal, Patna and Ors., (1961)II.LJ504SC wherein Das Gupta, J., speaking for this Court made the following pertinent observations on the scheme of the Act, at the time when Section 2A was not on the statute book :

"It is now well settled that a dispute between an individual workman and an employer cannot be an industrial dispute as defined in Section 2(k) of the Industrial Disputes Act unless it is taken up by a Union of the workmen or by a considerable number of workmen. In Central Provinces Transport Service Ltd. v. Raghunath Gopal, (1957)ILLJ27SC, Mr. Justice Venkatarama Ayyar Speaking for the Court pointed out after considering numerous decisions in this matter that the preponderance of judicial opinion was clearly in favour of the view that a dispute between an employer and a single employee cannot per se be an industrial dispute but it may become one if it is taken up by a Union or a number of workmen.

'Notwithstanding that the language of Section 2(k) is wide enough to cover disputes between an employer and a single employee", observed the

62
learned Judge, "the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of adjudication under the Act, when the same had not been taken up by the Union or a number of workmen'.

This view which has been re-affirmed by the Court in several later decisions recognises the great importance in modern industrial life of collective bargaining between the workmen and the employers. It is well known how before the days of collective bargaining labour was at a great disadvantage in obtaining reasonable terms for contracts of service from his employer. As trade unions developed in the country and collective bargaining became the rule the employers found it necessary and convenient to deal with the representatives of workmen, instead of individual workman, not only for the making or modification of contracts but in the matter of taking disciplinary action against one or more workmen and as regards all other disputes.

The necessary corollary to this is that the individual workman is at no stage a party to the industrial dispute independently of the Union. The Union or those workmen who have by their sponsoring turned the individual dispute into an industrial dispute, can therefore claim to have a say in the conduct of the proceedings before the Tribunal.

It is not unreasonable to think that Section 36 of the Industrial Disputes Act recognises this position, by providing that the workman who is a party to a dispute shall be entitled to be represented by an officer of a registered trade union of which he is a member...."

12. In addition, his submission that in Section 2 (ra) "unfair labour practice" is defined as any of the practices specified in the Fifth Schedule. The Fifth Schedule to the Act, in Part I Clause 15 enumerates as an unfair labour practice the action of the employers or trade unions of employers, "to refuse to bargain collectively, in good faith with the recognized trade unions". Such unfair labour practice is specifically prohibited by Section 25T of the Act and made punishable under Section 25U of the Act.

13. On the basis of that his submission is that the purpose of collective bargaining is best served if the entire collective speaks in one voice. However, this may not be achievable in practice and hence it is imperative that the majority view is accepted by the entire collective. This concept of majority rule as part of industrial democracy finds recognition in the provisions of the Industrial Disputes Act, 1947. Particularly, with respect to a settlement arrived at in the course of conciliation proceedings, Section 10 (2), 10A(3A) read with Section 18(3) (d) which mandate that the action of the majority will bind the minority, as also future workers. He also argued that the role of a recognized/majority union was emphasized even by the National Commission on Labour in its report in 1967.

14. Proceeding there from, Mr. Sibal argued that once recognition of majority union is accepted as a logical necessity for giving effect to the

64

statutory mandate , the next step is to determine the scope and extent of recognition. Here his submission was that industry wise recognition, wherever possible, is desirable which concept was even accepted by the National Commission on Labour. Mr. Sibal also referred to the Code of Discipline adopted at the 16th Session of the Indian Labour Conference held in May, 1956 and formally announced on June 01, 1958 which gives priority to the industry wise recognition over establishment/pant wise recognition. Mr. Sibal also sought to draw sustenance from Section 2(k) of the Industrial Disputes Act which defines the term "industrial dispute" and Section 2 (j) which defines "industry" and thus argued that even the concept of industry and industrial dispute is omnipresent in the ID Act.

15. Based on the aforesaid, his submission was that collective bargaining being the right of the worker, it is their interest and preference which could get paramount consideration while determining extent of recognition. He thus, argued that there was no right to effective collective bargaining, but here concomitant right goes to the root of the matter i.e. right to form association which would be meaningless if the right of the association to collective bargaining is not accepted.

16. Mr. Sibal then proceeded to develop the submission that in the present case industry-wise collective bargaining was more feasible, appropriate and justified rather than establishment wise. In order to

65

bring home this aspect, his submission was that all the employees in five successor companies are approximately 12000 of which more than 10000 are ex-employees of DVB. The service conditions of these transferee employees, such as promotions, transfers, leave and other allowances are tied together on account of Section 16 of the Delhi Electricity Reforms Act, 2000 and the Tripartite Agreement dated January 16, 2001. A conjoint reading of Section 16 of the DER Act, 2000 and Clause 3(b) of the Tripartite Agreement makes it clear that the service conditions of the transferee employees cannot be modified without "mutual negotiations and settlement with recognized union/associations".

17. He referred to the provision of Section 16 of the DER Act, 2000 and submitted that when the personnel had been transferred to a different company where he enjoyed the same terms and conditions of service, it could only be the majority union across these establishment that are industry level which could safeguard their interest more appropriately. He argued that on similar lines Tripartite Agreement dated 16.1.2001 recognized the rights of the employees of DVB guaranteeing them these rights provided that:-

"3) Now, therefore, in consideration of the promises and mutual conditions set forth herein, it is agreed that in the event of reorganization of DVB

66

into two or more corporate entities and disinvestment of any such entities of GNCT of Delhi and the DVB guarantee as follows:-

- a) There will be no retrenchment of present employees on account of being declared surplus or on account of restructuring of DVB and their status/service conditions will not change.
- b) The terms and conditions of service upon transfer to the corporate entities, such as promotions, transfers, leave and other allowances, etc. regulated by existing regulations/service rules i.e. FR/SR will be guaranteed to continue the same and any modifications shall be by mutual negotiations and settlements with recognized union/associations without detriment to the existing benefits.
- c) With regard to wage negotiations, the present system of bipartite negotiations shall continue.
- d) to
 - (i).....
 - ...
 - (j) All the existing agreements/settlements and liabilities shall be honoured by successor entities to the Board and the workmen represented by the recognized union and the associations.
.....”

18. Mr. Sibal laid emphasis on his submission that it is the appellant union which was the signatory to the Tripartite Agreement on behalf of workmen, being the recognized majority union. This status of the appellant union was accepted by the subsequently created successor companies, who have been dealing with the appellant union over the last several years until certain disputes arose qua some of the successor companies. The above quoted provision and clauses clearly identify the

67

collective and common interest shared by former employees of the DVB and the collective interest especially with respect to terms and conditions of service ought to be protected and enforced through collective bargaining at the industry level.

19. It is also submitted that the Govt. of NCT of Delhi has created a pension fund in the form of a trust for the benefit of the transferee employees which was common for all the employees across the five successor companies. Likewise, the five successor companies too constitute a "collective". The Govt. of NCT of Delhi is the most significant link binding all five successor companies. It owns and manages two of the five successor entities and has 49% shareholding, with equal management rights in the remaining three successor companies. He also argued that in relation to wages, clause 3 (c) of the Tripartite Agreement guarantees to the workers that the then prevalent system of negotiations i.e. between the Govt. and the workers through their recognized Union, shall continue. In relation to wages, the Wage Revision Committee, was constituted with participation of all the five successor companies. He thus concluded his arguments by making a passionate plea for recognizing the collective bargaining at industry level insofar these five establishments off-shoot of erstwhile DVB is concerned.

20. Mr. Nandrajog, learned Sr. Counsel appearing for the NDPL countered the aforesaid submission of Mr. Sibal. He countered the aforesaid submissions of Mr. Sibal by raising a preliminary objection to the maintainability of these proceedings. His first and foremost submission in this behalf was that there is no right of recognition at all of the trade union under any statute and his alternate submission was that even if such a right could be claimed, these were disputed questions of facts which required evidence and, therefore, appropriate forum was the machinery provided under the Industrial Disputes Act by raising industrial disputes. Giving the scheme of deconstruction of DVB, he pointed out that it has now been broken into various entities namely, generation, transmission and distribution. These five establishments were involved into one or the other activity and therefore their individual character were totally different from what the DVB was. Moreover, all the three categories i.e. generation, transmission and distribution were under different regulators. Insofar as distributing companies are concerned by giving this work to more than one entity, the idea was to encourage competition i.e. to break monopoly. In such a scenario, argued Mr. Nandrajog, that the DSEWU may be dominating in other establishment but had no partnership in this establishment and giving such a union right

69

of collective bargaining even in respect of the employees of this unit would not serve any purpose and would rather defeat the very objective.

21. Mr. Vinay Sabharwal, learned Counsel appearing for the IPGCL also emphasized that it was the prerogative of the employees to recognize or not to recognize a union. Recognition is accorded to maintain peace and harmony in the establishment in order to see that there is a mechanism for resolving the dispute across the table. For the purpose, he submitted that it was for the employer to see as to which Union in its establishment represents the worker and to deal with such a union. Whether it should be on industry-wise is the decision which has to be left to the employer. He also submitted that recognition of union was the subject matter of industrial dispute as provided in Sl. 131 Schedule 5 of the Industrial Disputes Act and writ petition were not maintainable. Learned counsel referred to various judgments in support of his submission which would be referred to at the appropriate stage.

22. DESU Majdoor Sangh had got impleaded itself in these proceedings and Mr. K.C. Dubey arguing for this Sangh also submitted that writ petition of DSEWU seeking recognition was not maintainable more so when there were so many disrupts within the union. He highlighted these

disputes. Thus, there were so many disputes on question of facts which could be gone into only by the Industrial Tribunal on reference of industrial dispute.

70

23. We have considered the aforesaid submissions of the learned counsel for the parties.

24. Before touching upon the issues involved, we would like to collate some of the facts in seriatim which have bearing on the questions raised.

As stated above, in the year 2000, the Government of NCT of Delhi formed a policy to restructure the DVB. Since the employees of the DVB were apprehensive about their retrenchment and their services, a Tripartite Agreement dated 16.1.2001 was entered into. The parties into the said agreement were Government, DVB and DVB Joint Action Committee.

This Tripartite Agreement inter alia provided that:-

“All the existing agreements/settlements and liabilities shall be honoured by the successor entities to the Board and the workmen represented by the recognized union and the associations.”

25. In 2002, the DVB was unbundled into five successor companies with different business namely;

IPGCL	-	Generation business
DTL	-	Transmission business

BYPL, BRPL, - Distribution business.
NDPL (TPDDL)

71

26. DPCL was set up inter alia to take over some of the liabilities of DVB. The employees of erstwhile DVB who were earlier involved with the consolidated functioning of the electricity industry consisting of all the activities of generation, transmission and distribution have now been transferred to the successor companies and they are discharging specific function either of generation or transmission or distribution depending upon the company to which their service has been transferred. It would be pertinent to mention here that in the year 2001 W.P.(C) 3635/2001 was filed by DVBKU for determination of majority character. In this writ petition, following prayers were made:-

“(a) issue appropriate Writ, Order for Direction in the nature of mandamus directing the respondent nos. 1 & 2 (DVB and Labour Commissioner, Government of NCT of Delhi) to determine the majority character of the trade unions representing the workmen/employees in respondent No.1(DVB) for the purpose of recognition as majority union, through secret ballot, as per the procedure prescribed in CLC instruction No. 25/80, dated 18.12.1980.

(b) issue appropriate Writ, Order of Direction directing respondent no.1 (DVB) to recognize the union found in majority after determination of majority character through secret ballot system for a period of two years from the date of the communication to the said effect.

72
petition was filed by NDPL Staff Association seeking direction for holding election in TPDDL and for determination of the majority character of the Association. Since TPDDL consented for holding election, the impugned orders were passed on the basis of said consent. As far as other two writ petitions were concerned, they were adjourned to 17.3.2011.

28. Be as it may, when the LPAs were filed challenging the order dated 21.2.2011, the other two writ petitions were also listed along with these LPAs under the circumstances already noted above. In these proceedings consent orders dated 27.5.2011 were passed whereby Division Bench allowing for separate elections to be held in five successor companies for the limited purpose of finding out which trade unions enjoys the majority of the employees. The consent to hold such elections was without prejudice to the rights and contentions of the parties to the appeal. Elections were held in each of the five companies through secret ballot on different dates. DSEWU has won the elections in the three distribution companies and IPGCL. DVBKU won the election in DTL.

29. From the aforesaid it becomes clear that insofar as DSEWU is concerned, it already holds majority in the three distribution companies as

This writ petition was dismissed by the learned Single Judge vide order dated 6.2.2002 observing as under:-

73

“Respondent No.1 now stands bifurcated in to different entities depending on the areas and nature of work being performed. In view thereof the present petition in this form cannot be maintained. Each entity has to be considered separately as it is not yet known what would be nature of the union of each of these entities.”

27. In the year 2006, NDPL Electrical Staff Association was formed as an establishment specific union of TPDDL, which was subsequently amended as NDPL Staff Association on 22.12.2009. In the year 2007, DTL and IPGCL refused to deal with DSEWU as the majority union, since they were outsiders and not their employees. It would be interesting to note that W.P.(C) 4567/2010 was filed by DVBKU for the conduct of combined elections to be held in all the bifurcated companies and the W.P.(C) 4018/2008 of DSEWU seeking recognition as majority union had come up for hearing alongwith WP(C)4763/2010 (out of which LPA 283/2011 arises). They were listed together on the premise that issues in all the writ petitions were similar in nature. Accordingly, on 8.2.2011, 9.2.2011 and 21.2.2011 these writ petitions were taken up together. However, on 21.2.2011, the counsel for DSEWU and DVBKU submitted that they were not concerned with the WP(C) 4763/2010. This writ

well as IPGCL and, therefore, on the basis of that election, it can always seek recognition. So is the position of DVBKU in DTL.

74

30. In this backdrop, we have to decide the issue raised by the appellants namely DSEWU and DVBKU. They claim right of "collective bargaining" through their representative union and this right of "collective bargaining" and it is submitted that this right of "collective bargaining" should be 'industry' based. No doubt, collective bargaining has been considered by the Apex Court as a *raison d'être* of the trade unions in ***Food Corporation of India*** (supra). The moot issue is as to whether this "collective bargaining" should be establishment wise or industry based. There may be circumstances which may define industry-wise recognition. The National Commission of Labour, 1967 made certain recommendations which would have bearing on this aspect and therefore the same are reproduced:-

"We consider that industries, in which workers are organized on an industry/area basis and in which collective bargaining has developed at the industry/area level, should maintain and encourage this practice of recognizing unions at the industry/area level. (emphasis supplied). Such recognition may give rise to certain problems in regard to the circumstance in which it should be granted and in regard to the rights and functions of plant-wise unions vis-a-vis the industry/area unions, particularly when the majority union at the plant level has no affiliation with the recognized

75

industry/area union. It has been brought to our notice that employers of units in which the industry-level recognized union has no following, find themselves in a difficult situation when confronted by the demands of the plant union, which they cannot ignore. This situation can only be set right by a proper demarcation of the rights and functions of the industry/area recognized unions and plant-wise unions, and by ensuring that recognition at the industry/area level is conferred subject to certain well defined conditions. We consider that industrywise recognition is desirable, wherever possible. We are, therefore, in favour of recognition being granted to plant unions in an area/industry wherein a union has been recognized for an industry/area as a whole. (emphasis supplied)."

31. Likewise, Code of Discipline provides as under:-

"A representative union for an industry in an area should have the right to represent the workers in all the establishments in the industry, but if a union of workers in a particular establishment has a membership of 50% or more of the workers of that establishment it should have the right to deal with matters of purely local interest, such as, for instance, the handling of grievances pertaining to its own member. All other workers who are not member of that union might either operate through the representative union for the industry or seek redress directly."

32. So far so good. What is to be noted from the above is that even as per the aforesaid, industrywise recognition is desirable, wherever possible.

In the present case, whereas the petitioner DSEWU argues that having

7b

regard to the fact that it is erstwhile DVB which was one entity and now unbundled in these different union and purpose remains the same namely, generation, transmission and distribution of the electricity and that too, for the residents of Delhi as well as the fact that the Tripartite Agreement ensures the existing work norms prevailing in DVB to continue including service conditions of the employees would continue, the respondents argued otherwise. Their case is that on the formation of these five entities with specific job activity/profile, the position has undergone sea change. There is no similarity in terms of employment and interest of workmen. Mr. Nandrajog had highlighted that now the service conditions of ex-DVB employees and employees hired by TPDDL are completely different. Following tabular comparison was given by him:-

Terms	Ex-DVB Employees	TPDDL Employees
Wages	They are paid wages in line with the recommendation of Wage Revision Committee headed by Justice Lokeshwar Prasad. DA is revised twice in a year	They are paid wages in accordance with the individual contract entered between the employee and the employer. No DA is paid to them.
Eligibility for coverage under a scheme for	They are member of GPF. They are member of pension fund and pension is paid to DVB employee by pension trust. They are paid	They become member of EPFO. No pension related benefit is available to them except under EPS. They are paid gratuity

77

retirement benefits	gratuity as per the rule prescribed under CCS(Pension)Rules.	under Payment of Gratuity Act.
Maternity Leave	135 days	84 days
Paternity Leave	15 days	6 days
Child Care Leave (for Female Employees)	730 days upto 2 children till attainment of 18 years of age	No such provision
Medical benefits	They are provided free medicine at the company's dispensaries and free medical treatment at the hospital in case of admission at CGHS rate. There is provision for assistance for free medical relief after retirement	No medicine is provided free of cost at company's dispensaries. These employees are covered under mediclaim policy taken by the company. No such medical relief after retirement.
Voluntary retirement	They are guided by the provision of Rule 56 (K) of FRs which regulate voluntary retirement	No such provision
Retrenchment	Tripartite Agreement imposes restrictions with regard to retrenchment of these employees	They can be retrenched.

33. It was also argued that the concept of recognizing a single representative union that is exclusively empowered to espouse the claims

78

of all the employees of TPDDL, disregards the position that TPDDL has different classes of employees, which may not have demands or aspirations that are common to one another. Recognizing that a particular union would have the power to bargain collectively on behalf of all such employees and to enter into settlements that would be binding on all such employees may therefore work contrary to the interests of all the workers.

34. When we look the aforesaid contrasting stands taken by the respective parties, we intend to agree with the submissions of the respondents i.e. to find out as to whether industry-wise recognition is feasible or it has to be establishment wise, can be gone into by the Industrial Tribunal by means of adjudication. The Industrial Disputes Act contemplates such mechanism to sort out such issues. Mr. Nandrajog, learned Sr. Counsel has drawn our attention to section 10 of the ID Act which provide that in respect of each industrial dispute where the parties apply for a reference to any of the forums prescribed under the ID Act, that the appropriate government shall, if satisfied that the persons applying represent the majority of each party, make a reference accordingly.

Likewise, Section 10A(3A) of the ID Act provides for reference to arbitration. Therefore, with respect to each reference, (i) the appropriate government is required to be satisfied as to whether the majority has been

represented; and (ii) in case of arbitration, the concerned parties have to be allowed the opportunity of presenting their case. Such provisions militate against the proposition put forth by DSEWU that a particular union can claim a general right to be recognized as they representative union entitled to represent the workmen of an establishment on all issues. The ability and keenness of any union to effectively represent the employees on a particular issue has to be seen in light of the particular facts of a case and the class of employees who would be affected by such negotiation. Therefore, the issue whether establishment-wise recognition is to be given to the unions or it should be industrywise, needs adjudication for which the appropriate forum would be the Industrial Tribunal.

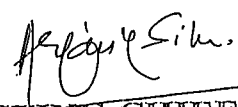
35. We have also to bear in mind that as of now, there is no statutory provision, which gives right to a union to seek recognition and such a right can be claimed only by raising industrial dispute. We would like to highlight to mention the internal disputes as highlighted by the learned counsel for the DESU Mazdoor Sangh. He had submitted that after this Court directed elections vide order dated 27.5.2011, in compliance with the said order, the Deputy Labour Commissioner vide order dated 12.8.2011, specifically wrote "unions registered under Trade Union Act, 1926 only can file their nomination papers before the respective Presiding

80

Officers". The petitioner submitted its nomination paper. It mentioned the date of registration as 06.04.1970. It wrote its Regn. No.36. It submitted a Registration Certificate which is in the name of "Delhi Electric Supply Undertaking Workers Union" which bears Regn. No. 1456 dated 06/04/1970. It is sought to point out that the registration No. 36 is against the name of an Union namely "The Delhi State Electricity Workers Union". There was another union namely "Delhi Electricity Supply Undertaking Workers union" bearing registration No.1456 dated 06/04/1970. A letter dated 31/3/1973 issued by the office of Registrar Trade union shows that the said second Union bearing Regn. No. 1456 merged into the union bearing Regn. No. 36. Thus, on 28/12/1972 the union namely "Delhi Electricity Supply Undertaking Workers Union" bearing Regn. No. 1456 was merged into "the Delhi State Electricity Workers Union" bearing Regn. No. 36. Therefore, the Regn. No. 1456 is no more in existence and the Regn. No. 36 is of the Union namely "The Delhi State Electricity Workers Union." Mr. Dubey, further submitted that the reply from the Deputy Labour Commissioner does show that he petitioner is not a registered Trade Union.

36. For this reason, we dismiss these LPAs as well as the Writ Petitions giving liberty to the petitioners in these writ petitions to raise industrial dispute, if they so desire.

37. No order as to costs.


ACTING CHIEF JUSTICE

(RAJIV SAHAI ENDLAW)
JUDGE

JULY 13, 2012

skb