

* **THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA 550 OF 2010**

% Reserved on: 01.11.2011
Pronounced on: 30.01.2012

UNION OF INDIA **... APPELLANT**

Through: Mr. Jagjit Singh, Advocate.

VERSUS

RAIL COACH FACTORY MEN'S UNION **... RESPONDENT**

Through: Dr. Aman Hingorani, Advocate with
Ms. Swati Sumbly, Advocate.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, ACTING CHIEF JUSTICE

1. The respondent herein is a trade union of workers of Railway Coach Factory (RCF), Kapurthala. It is duly registered under the Indian Trade Unions Act, 1926 and is affiliated to the All India Railwaymen's Federation (AIRF), New Delhi as also to the Hind Mazdoor Sabha, Mumbai.

2. The Railway Coach Factory workers are the members of the respondent union which is treated at par with the Railway Production Units (RPU's). Though in respect of Zonal Railways, the Ministry of Railway

(Central) has the policy for recognition of unions based on secret ballot, though this system is not available in RPU.

3. Chapter XXV of the Indian Railway Establishment Manual, Volume-II (IREM) provides for 'Rules for the Recognition of Service Associations of Railway Servants'. As per Rule 2503 'Every gazetted Railway servant of the same class must be eligible for membership of the association'. Rule 2510 which is relevant in this behalf reads as under:

“2510. Government is prepared to accord official recognition to associations of its industrial employees. The grant and continuance of recognition rests in the discretion of Government, but recognition when granted will not be withdrawn without due cause and without giving an opportunity, to the association to show cause against such withdrawal.”

As per this rule, the Government agreed to accord official recognition to Associations of its 'industrial employees'. The term 'industrial employees' includes the railway servant. In all Central Government Ministries and Departments including the Railways, Joint Consultative Machinery (JCM) has been set up. This is existing since 1966. Clause-II of the Scheme for JCM provided that it would “supplement and not replace the facilities provided to employees to make only representations, or the associations of employees to make representation of matters concerning their respective constituent service grade etc”. In this JCM, the representatives of the recognized Unions participate on behalf of the

employees. As pointed out above, these recognized unions are in Zonal Offices.

Insofar as Railway Production Units are concerned, there is no system of recognition of trade unions. Instead only Staff Councils are allowed to represent the cause of the workers and trade unions are not permitted. As per the appellant, the system of Staff Council was introduced in 1954 and subsequently approved by the Cabinet, Govt. of India in the year 1967. Pursuant to the system, the appellant shows one post of Zonal Secretary belonging to each recognized association at the production units.

Chapter XXVI of the IREM deals with 'Staff Council and Negotiating Machinery'. Rule 2616 falling in this Chapter provides for the detailed procedure for the working of the negotiating machinery. Since RCF, Kapurthala is treated as part of RPU, the appellant has allowed only Staff Council to represent cause of the workers. As pointed out above, as per the appellant this system was introduced in the year 1954 and approved by the Cabinet in the year 1967. The appellant also maintains that since its inception, the Staff Council has worked properly and efficiently and at no point of time there has been any allegation that on account of mechanism of Staff Council, genuine grievances of workmen employed in the production units have not been redressed to the entire satisfaction of the employees and in the public interest. The Staff Council is comprised of members directly elected by workers themselves, to represent the grievances and interest through regular meetings with the local management at local level, they also hold meeting with the Board once a year where policy as well as the issues of common concern for the employees are taken up, discussed threadbare

and ways and means are devised to sort them out amicably and peacefully. It is also claimed that as far as mechanism is concerned, its efficiency and efficacy has never been in doubt and even the respondent does not make any such allegations about the efficacious functioning of the Staff Council system.

4. The respondent was aggrieved by the fact that why there should not be a system of recognition of trade unions in the Railway Production Units. The respondent thus filed writ petition under Article 226 of the Constitution of India before this Court which was registered as Writ Petition (C) No. 26 of 2008. The following reliefs were claimed by the respondent in the said writ petition:-

“(a) Issue an appropriate Writ Order of Direction, and in particular

- (i) A Writ of Mandamus requiring the Respondent to recognize the registered trade unions in the Railways Production Units as Railway Trade Unions.
- (ii) A Writ of Mandamus directing the Respondent of extend to the Railway Production Units the application of Modalities published on 09.10.2007 for conducting “Secret Ballot” for the purpose of granting recognition to the Railway Trade Unions.”

5. The appellant herein contested the aforesaid petition by filing its counter affidavit. The matter was finally argued on 29th January, 2010 when the orders were reserved which was pronounced on 3rd March, 2010. The learned Single Judge allowed the writ petition and issued the writ of mandamus directing the appellant herein to apply the modalities for

recognition spelt out in the Circular dated 9th October, 2007 to the RPU, Kapurthala as well and permit the respondent union to participate in the 'secret ballot' for determining which railway unions should be accorded recognition and consequently granted representation in the JCM.

6. At the time of hearing the appellant had relied upon the Union Cabinet decision dated 26th May, 1967 for retaining the Staff Council in the RPUs and in this decision it was also stated that the Railway Board would examine further the question about the future set up in the due course. According to the respondent, it could not be pointed out as to whether any further decision in this behalf was taken at the time of arguments. However, after the judgment was reserved the officials of the appellant could lay hands on the decision of the Railway Board taken in the year 1988 and 1996 where the question of continuance of staff council was taken up and it was decided by the Railway Board to continue existing system of staff council in all the six production units of the Indian Railways. However, by the time the affidavit was prepared, the judgment was pronounced. The appellant, therefore, based on the aforesaid material, filed review petition, the Learned Single Judge has, however, dismissed the review petition as well vide orders dated 18th May, 2010.

7. Assailing both these orders dated 3rd march, 2010 passed in the writ petition and 18th may, 2010 passed in the review petition, present intra-court Appeal is preferred by the appellants.

THE SCOPE OF CONTROVERSY:

8. From the facts narrated above, it is clear that whereas the system of recognition of railway unions is prevalent in the Zonal Offices of recognized unions are allowed to participate in the JCM, insofar as production units are concerned, the Railways has the system of staff Council. These Staff Council take up the legal issues pertaining to their respective production units and have no representation in the JCM which functions on all India basis. The respondent union is, thus, aggrieved by the action of the appellant in excluding them from 'secret ballot' and recognition and for this reason, prayer was made in the writ petition to extend the modalities for conducting secret ballot as provided in Circular dated 9th October, 2007 to the Railway Production Units as well. The case of the respondent was 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 at 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 organizational set up, labour etc.) apply mutatis mutandis to RPU's. It is pointed out that by Circulars dated 29th August, 1997 and 15th September, 1997 that the Ministry of Railways has granted facilities to all India OBCs 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. It was also urged that JCM did not exclude Railwaymen in RPU's and that the Staff Council in the RPU's had been in effective in dealing with the violations of

the provisions of Minimum Wages Act, 1948 and the Contract Labour (Regulation & Abolition) Act, 1970. The respondent also pointed that on 26th June, 2002 the Railways had issued instructions to consider the applications by the affiliates of Bharat Rail Mazdoor Sangh (BRMS) and others for grant of recognition. In these instructions, it was stipulated that for grant of such recognition, the concerned union who fulfilled the condition 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.25274/2002 filed in the Madras High Court. The Madras High Court allowed the said writ petition vide orders dated 17th October, 2003 and set aside the instructions dated 26th June, 2002 holding 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. The matter was taken up to the Supreme Court and the Supreme Court upheld the aforesaid decision of the Madras High Court by dismissing the SLP vide orders dated 8th March, 2004. Pursuant to the aforesaid directions, the respondent ultimately framed guidelines for secret ballot which was circulated vide letter dated 9th October, 2007 addressed to all the General Managers of Indian Railways except the RPU's. On this basis, the respondent union in its writ petition filed in this Court also claimed that, adoption of "secret ballot" in compliance with the High Court direction was required to be initiated.

9. The case of the appellant on the other hand is that there is no need to have any such recognition of the unions insofar as RPU's are concerned

where separate system of Staff Council is working satisfactorily and these Staff Council have been set up pursuant to a policy decision of the Government of India and as approved by the Cabinet as well as Railway Board on Review of the matter from time to time. It is submitted that the Cabinet decision of the Government was taken to continue the system of Staff Council in the production unit in view of the nature of functions of production units. It is further stated by the appellant that there is no vested right in the respondent to seek recognition and the Government is well within its power to decide, as a matter of policy, that Staff Council would be only mechanism of grievance redressal of the employees in the RPU's and not trade unions. The policy decision, as per the appellant was based on the following rational:-

“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 for a 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 union 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 alongwith Federations. At present the decisions taken for Zonal Railways is equally binding on Production Units. This is possible because there are no recognized union in

Production Units and as such there is no opposition to the decision taken with Federations.”

10. As per the respondent, it has the right to participate in JCM. The respondent points 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 was pointed out that there are 7200 Group C and D staff at the RCF, Kapurthala who constitute the petitioner union and they have fundamental right to form a trade union and to participate through secret ballot in the JCM and take the benefit of collective bargaining. It is more so when 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 Government.

JUDGMENT OF THE LD. SINGLE JUDGE:

11. The learned Single Judge, after taking note of the area of dispute and the respective contention, accepted the legal position that though right to form a trade union may be a fundamental right under Article 19 (1) (c) of the Constitution of India, the imposition of conditions for recognition would not per se be viewed as an unreasonable restriction within the meaning of Article 19 (4). It is the prerogative of the employer to set out the condition

for recognition. According to the learned Single Judge, the moot question was as to whether in the form of Rules of 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. It has been observed that the respondent was aggrieved by the threshold bar imposed on not being even allowed to participate in the process that would enable it to seek recognition. The learned Single Judge, thereafter examined the provisions of IREM. It has been noted that 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 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 directly 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. The Court thus held that IREM does not bring out any distinction between the unions

and RPU's and other establishments within the Railways unless such a restriction is spelt out in the IREM itself, the respondent which is a union in RPU's cannot be discriminated against.

12. The learned Single judge also rejected the distinction sought to be drawn by the appellant between the RPU's and other workshops. The Court noted that the distinction given by the appellant was that the product profile of Production Units, their functioning and establishment are quite different from Zonal Railway's composition, organizational structure and functioning of staff councils had been kept different and separate from Zonal Railways recognized unions. It is observed that this can hardly constitute a rational basis to discriminate against unions in RPU's by excluding them from the applicability of the modalities set down by the circular dated 9th October, 2007. Further, this kind of classification of unions in RPU's 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 recognized for participation in the JCM. Thus, opined the learned Single Judge, that the denial to the respondent 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.

13. Other reason given by the appellant to deny the recognition namely there is staff council in the RCF, Kapurthala which can be a substitute for a recognized trade union also did not find favour with the court below. It was noted that Union Cabinet took a decision on 26th May, 1967 i.e. 40 years

ago and as per that decision the Railway Board was to examine further the question about the future setup and the review was to be done as to whether at the level of Zonal Railways or of the Divisions, the Staff Council should be abolished, the Review Committee for RCF was not even set up.

14. As pointed out above, at that time, the appellant did not produce Railway Board decision in the year 1988 and 1996 when such a decision was taken to continue the Staff Council in RPU's. Be as it may, according to us, that would not make much difference in view of further solid reason given by the learned Single Judge that the intention not to grant recognition to trade unions in the RPU's is not justified and in any event such decision does not appear to have found expression in any specific provision of the IREM

PRESENT APPEAL:

15. The arguments advanced before us in the present appeal remain the same. No doubt, recognition of union is not a right. It is the prerogative of the employer to recognize a union or not. In the Trade Union Act also there is no provision for recognition. It is also well established law that when the Government introduced the system of recognition, it was well within the rights of the Government to impose conditions for recognition. Such conditions are not to be treated as unreasonable restriction within the meaning of Article 19(4) of the Constitution. The question, however, as rightly delineated by the learned Single Judge is that when the rules of recognition are provided for zonal railways, whether excluding the RPU's from the purview thereof would amount to discrimination and would be

impermissible under Article 14 of the Constitution. In order to justify such an exclusion of RPU's, the Government is required to demonstrate that there is a reasonable classification between RPU's on the one hand and Zonal Railways on the other hand and this classification is based in intelligible differentia having nexus with the objective sought to be achieved. We find that in the instant case the appellant has not been able to provide any satisfactory answer for this classification which appears to be irrational and arbitrary.

16. Let us first discuss the structure of the Staff Council which the appellant perceives as justifiable substitute for trade unions. The stand of the appellant is that there is no necessity for recognition of the respondent union as the Railway Trade Union as there is a Scheme of Staff Councils which can redress the grievances of the employees. However, the rules regulating the formation and functions of the Staff Council would demonstrate that it is not so inasmuch as:

- (i) The staff Council is to function as a purely advisory body;
- (ii) The General Manager has the right to amend the Constitution of the Staff Council, as and when necessary;
- (iii) The President of the Staff Council is to be a Gazetted Officer (not below SA Grade) to be nominated by the General Manager;
- (iv) The Secretary of the Staff Council is to be a Gazetted Officer to be nominated by the General Manager
- (v) The composition of the Staff Council includes nominated members and members co-opted adhoc;

- (vi) The nominated members could be gazette officers and are to be nominated by the General Manager in such number as will be decided by the General Manager
- (vii) The co-opted members could be gazette officers and are to be nominated by the General Manager;
- (viii) The General Manager has the right to revise the composition of the Staff Council;
- (ix) Interim vacancies in the Council are to be filled by the President of the Council by nominated;
- (x) Only those non gazette staff are eligible for election to the Staff Council who have more than three years of continuous service;
- (xi) Matters concerning pay scales and allowances, regulation of hours of work and other matters of high policy affecting all Railways shall not be discussed at the meeting;
- (xii) It is open to the President to delete from proposed agenda for the meeting subjects which are not open for discussion;
- (xiii) The General manager has the absolute powers to change, modify, add, delete, amend etc. to any or all rules and sub rules at any time with or without consulting the Staff Council;
- (xiv) Any directive of the Railway Board on the functioning of the Staff Council supersedes or alters the rules to the extent indicated in the directives.

17. The claim of the appellant that Staff Councils have worked properly, efficiently, satisfactorily or in public interest and have addressed genuine grievance of the workers is refuted by the respondent union. It is pointed out that such Staff Councils which existed in Zonal Railways as well were abolished long ago but continue to remain in Railway Production Units.

This is so even when it enjoys the same status as the Railway Workshops where Staff Council system has been abolished. No valid reason is forthcoming as to why such Staff Council are abolished in the Railway Zonal Office but continue to remain in RPU's. The respondent further states that the respondent union as well as its IAIRF have consistently been protesting against the dissatisfactory and improper working of the Staff Council for decades and have raised such issues from time to time. Even the Staff Council at the RCF Kapurthala itself recorded "the apathetic and indifferent attitude adopted by the RCF Administration to solve the most genuine and legitimate demands of the employees". The members of the Staff Council vide Circular dated 10th January, 2006 tendered their resignation stating that the RCF administration would be entirely held responsible for not maintaining industrial peace and harmony in the organization.

18. We also agree with various reasons given by the learned Single judge holding that the impugned action is discriminatory. It will also be a pertinent aspect, which cannot be ignored that the RPU's are deprived of their representation in JCM by the aforesaid mechanism. It is not wise to keep them away from this consultative machinery while deciding their fate and representation to them will be conducive to a healthy atmosphere and in public interest. Even if the Railway Board had deliberated upon the matter in 1988 and 1996, it would not be of any avail when the decision itself suffers from the vice of discrimination.

19. We thus do not find any merit in this appeal which is accordingly dismissed with costs quantified at Rs.15,000/-.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

JANUARY, 30, 2012
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