

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 3804 OF 2017**

Tanksal Kamgar Sena
C.o. India Govet Mint,
Shahid Bhagat Singh Marg,
Fort, Mumbai – 400 023

.... Petitioner

Vs.

1. India Government Mint
A Unit of Security Printing & Minting
Corporation of India Ltd,
Shahid Bhagatsingh Marg,
Fort, Mumbai 400 023.

2. Deputy Manager (HR)
Chief Election Officer,
India Government Mint,
A Unit of Security Printing & Minting
Corporation of India Ltd,
Shahid Bhagatsingh Marg,
Fort, Mumbai 400 023.

.... Respondents

Ms Neha Bhide, Adv with YM Pendse for the Petitioner.
Mr Yuvraj Narvankar, Adv for Respondents Nos. 1 and 2.
Mr Ashesh Avinashi, Deputy Manager-HR of Respondent No.1 present.

**CORAM : ANOOP V. MOHTA AND
RAVINDRA V. GHUGE, JJ.**

DATE : 3 APRIL 2017.

O R A L J U D G M E N T (Per Ravindra V Ghuge, J.)

1. This matter was heard for quite some time and was adjourned in order to enable Respondent No.1 to take instructions as regards the withdrawing of the schedule of elections (election programme) keeping in view that the Unions concerned were directed by a notice dated 8th March 2017 to submit a list of their members.

2. The learned counsel for Respondent No.1 submits on taking instructions from Mr Ashesh Avinashi, Deputy Manager-HR that elections schedule / program declared pursuant to the notice dated 8th March 2017 shall stand withdrawn.

3. We find that Rule 41 and 42 of the Industrial Disputes (Central) Rules 1957 are to be read in tandem. The employer is required under Rule 41 to call for the detailed information as regards the membership of the Union and their distribution amongst various sections, shops or departments of the establishments. If such information is not supplied by any Union within a period of 30 days from the date of such notice, it is to be deemed that the said Union is

not in existence.

4. For the sake of clarity, Rules 41 and 42 are reproduced as under:-

41. Consultation with trade unions.- (1) Where any workmen of an establishment are members of a registered trade union the employer shall ask the union to inform him in writing-

(a) how many of the workmen are members of the union; and

(b) how their membership is distributed among the sections, shops or departments of the establishment.

(2) Where an employer has reason to believe that the information furnished to him under sub-rule (1) by any trade union is false, he may, after informing the union, refer the matter to the Assistant Labour Commissioner (Central) concerned for his decision; and the Assistant Labour Commissioner (Central), after hearing the parties, shall decide the matter and his decision shall be final.

42. Group of workmen's representative.- On receipt of the information called for under Rule 41, the employer shall provide for the election of workmen's representative on the Committee in two groups-

(1) those to be elected by the workmen of the establishment who are members of the registered trade union or unions, and

(2) those to be elected by the workmen of the establishment who are not members of the registered trade union or unions, bearing the same proportion to each as the union members in the establishment bear to the non-members:

5. There is no dispute that there are three Unions active in the Respondent No.1 establishment namely Tanksal Kamgar Sena, the Petitioner herein, Tanksal Mazdoor Sabha and Mumbai Mint Staff Union. There are also some workers who are said to be not affiliated with any of these three Unions and they are not the members of any of these three Unions. In the elections to be conducted for electing the representatives of the Union, this category of workers, who are not members of any Union, also has to be taken into account.

6. Considering the above, this Petition is disposed of by recording the statement of Respondent No.1 upon taking instructions from Mr Avinashi, which is undisputed, that the notice for submitting information about the workmen / members under Rule 41 is dated 8th March 2017. On or before, 8th April 2017, these three Unions are obliged to submit information about their members under Rule 41. Though it is not so provided, we deem it appropriate to observe that during this period the Respondent No.1 establishment would have to prepare the list of such workmen who are not members of any Union.

7. Considering the above, all the Unions concerned are given

time upto 8th April 2017 to submit the details of their membership to Respondent No.1. This would be followed by a scrutiny by Respondent No.1 and in the event it so finds or believes that the information furnished by any of the Unions under Rule 41(1) is false or incorrect, the said matter would then be referred to the Assistant Labour Commissioner (Central) under Rule 41(2) whose decision in this context would be final.

8. In order to enable the Respondent No.1 to perform this exercise of scrutinizing the details of the information submitted by the Unions, we expect that Respondent No.1 would complete the said exercise within a period of one week from 9th April 2017 and in the event of any dispute would refer the matter to the concerned Assistant Labour Commissioner (Central) under Rule 41 (2). After the Competent Authority decides the issue of membership under Rule 41(2), Respondent No.1 establishment would thereafter proceed to follow the procedure laid down under Rule 46 onwards for conducting the elections of these Unions as well as the category of such workers who are not the members of any Union.

9. With the above directions, this Writ Petition is disposed of.

(RAVINDRA V. GHUGE, J.)

(ANOOP V. MOHTA, J.)