

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.08.2017

PRONOUNCED ON : 17.08.2017

C O R A M

**THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

**Writ Appeal Nos.768 & 771 of 2017 and
C.M.P.Nos.10743 & 10547 of 2017**

The Chief Executive,
Railway Employees Co-operative,
Credit Society Ltd.,
Ashok Vihar Complex,
Old Zoo Road,
Chennai – 600 003.

..Appellant in W.A.No.768/17

Railway Employees Co-operative
Bank Staff Union (Regn.1131)
Rep. By its General Secretary,
No.5/5, V.O.C Nagar Main Road,
Anna Nagar East, Chennai – 600 102.

..Appellant in W.A.No.771/17

Vs.

1.The Commissioner of Labour cum
Registrar of Trade Unions,
Office of the Labour Commissioner,
DMS Complex,
Teynampet,
Chennai – 6.

2.Railway Employees' Co-operative Society
Staff Union (Reg No.3432/CNI),
Rep. By its Secretary, R.C.Cyril Thiagaraj,
No.2/30, Lettangs Road,
Vepery, Chennai – 600 007.

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3.Railway Employees Co-operative
Bank Staff Union (Regn.1131)
Rep. By its General Secretary,
No.5/5, V.O.C Nagar Main Road,
Anna Nagar East, Chennai – 600 102.

.. Respondents in W.A.No.768/17

1.The Commissioner of Labour cum
Registrar of Trade Unions,
Office of the Labour Commissioner,
DMS Complex,
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2.The Chief Executive,
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Staff Union (Reg No.3432/CNI),
Rep. By its Secretary, R.C.Cyril Thiagaraj,
No.2/30, Lettangs Road,
Vepery, Chennai – 600 007.

.. Respondents in W.A.No.771/17

Common Prayer: Writ Appeal filed under Clause 15 of the Letters Patent
against the common order passed by Hon'ble Mr.Justice M.M.Sundresh in
W.P.No.1615 of 2015 dated 10.04.2017 (made ready on 05.05.2017).

In W.A.No.768 of 2017:-

- For Appellant - Mr.R.Krishnamurthy, Senior Counsel
for Mr.A.Jenasenan
- For R.1 - Mr.V.Jayaprakash Narayanan,
Special Government Pleader
- For R2 - Dr.V.Suresh

In W.A.No.771 of 2017:-

- For Appellant - Mr.A.L.Somayaji, Senior Counsel
for Mr.Chandra Sekar
- For R.1 - Mr.V.Jayaprakash Narayanan,
Special Government Pleader
- For R.3 - Dr.V.Suresh

COMMON JUDGMENT

G.JAYACHANDRAN.J.,

The moot question raised in these two Writ Appeals is, "In an establishment with four registered trade unions, Whether one among the four unions, demand for change in the method of membership verification from 'check off' to 'secret ballot system' to identify which union commands the majority of workers support ?"

2. Background:

Railway Employees Cooperative Credit Society is nearly 100 years old. It is a multi-state Co-operative Society with more than 1200 employees. The Railway Employees Co-operative Bank Staff Union is presently the

union recognized as majority union by the Society management. During the year 2012 dissatisfied with the functioning of the office bearers, rival union was formed in the name of Railway Employees Cooperative Society Staff Union (RECSSU). When the newly formed union requested the Society management to conduct election among trade unions to determine the relative strength and to elect representatives of the employees to the Board of Trustees of Railway Employee Cooperative Credit Society Staff Provident Fund, the request was not considered. Hence two writ petitions were filed by Railway Employees Cooperative Society Staff Union(RECSSU) for the following reliefs:-

W.P.No.17101 of 2014:

"A writ of mandamus directing the third respondent to conduct elections among all the trade unions existing in the third respondent society for the purpose of electing representatives of the employees to the Board of Trustees of the second respondent Fund under the supervision of the first respondent".

W.P.No.1615 of 2015:

“A writ of mandamus directing the respondents to determine the relative strength of all the registered Trade Unions by way of secret ballot to be conducted under the overall supervision of the first respondent Commissioner of Labour/Registrar of Trade Union.”

3. For the sake of convenience, wherever necessary the Railway Employees Cooperative Credit Society is referred as “Society”, the Railway Employees Co-operative Bank Staff Union (RECBSU) as “old Union” and the Railway Employees Cooperative Society Staff Union (RECSSU) as “new union”.

4. In the writ petitions, the new union contended that, till 2011 the Society employees were represented by the old union, later, dissatisfied with the functioning of its office bearers, majority of the members left the old union and formed a new union by name Railway Employees Co-operative Society Staff Union. The new union is having about 733 members out of 1235 employees, whereas the other 3 unions have only nominal members. Therefore, their union should be recognized in the place of the old union. Since the subscription of the members are separately collected by the respective unions and not deducted directly from their salaries

verification of membership strength through 'check off system' is not feasible. Therefore, representation was given to the society management to conduct secret ballot to find out the majority union. The society management did not consider the said representation. Without ascertaining the respective membership of the rival unions, the society management continue to negotiate with the old union.

5. Further the Society is exempted from EPF Act and it has its own private Provident Fund Scheme. As per the provisions of the EPF Act, in case of private EPF scheme, Board of Trustees has to be constituted, in which the recognized union has a right to nominate its representative. In case of more than one recognized unions, the employees representative has to be elected among the employees. The term of office to the present Board of Trustees of the Railway Employees Co-operative Credit Society Staff Provident Fund expired on 31.05.2014, the petitioner union, which is the union having the largest number of members, is entitled to nominate the representative to the Board of Trustees. The representation to that effect given to Regional Commissioner went in vein. To their shock, the Management of the Society in their response to the representation had stated that, the old union alone is the recognized union. The management of the society without election attempting to recognize the old union, which has lost the majority support. This will defeat the very purpose of collective

bargain. To assess the support base of the each unions election by secret ballot is the good mode. Hence writ petition seeking mandamus directing the chief Executive , Railway Employees Co-operative Credit Society to determine the relative strength of all the registered trade unions by way of secret ballot.

6. In their counter affidavit, the Society questions the very maintainability of the writ petitions. According to the Society, it is nearly 100 years old and till 2011 it had only one trade union namely RECBSU (old union). This union had been given the status of recognized Trade Union and the said status continues till now. The writ petitioner union RECSSU(new union) was formed in the year 2012. Its members had indulged in various illegal and unlawful activities including illegal strike, damage to CCTV camera, assault on the employees and ill-treating the supervisors. Hence departmental action has been taken against them.

7. The claim of the writ petitioner regarding its members strength is denied and it is positively averred that, out of 1204 employees, 853 employees are members of the Old Union as on April 2011. On production of membership applications, the signatures were verified with the official records and found correct. In the year 2013, the recognised Union produced 757 membership applications and in the year 2015, they produced 758

membership application. As on 22.01.2016, they have 764 members. The recognition granted in April 2011 is valid for 6 years and hence the Society Management engaged in negotiations with the Old Union being the recognised Union with majority members. Before the Assistant Labour Commissioner, the writ petitioner Union initiated proceedings for 'Protected Workman Status' for 13 of its members. In that proceedings the Society Management called for the members details from all the four Unions. While the old Union furnished particulars and applications of 757 members the other 3 unions including the writ petitioner union did not produce any details containing their membership application forms to the Society Management.

8. Regarding the allegation about nomination of employees representative in the Board of Trustees constituted under Private Provident Fund Scheme, it was contented that the Society Management has formulated regulations and as per the regulation, the majority union is recognised and its nominee is nominated in the Board of Trustees as employees representative as per the terms of Section 79(C) (3) (a) of the EPF Scheme 1952. It is also pointed out in their counter affidavit, that the writ petitioner and few others were office bearers of the old union till 24.11.2011. Only after forming New Union on 23.11.2011 they resigned from their memberships of the Old Union. They got the Union registered

only on 02.01.2012. It is also contented by the Society Management, that there is no requirement in law to recognise a Trade Union, there is no vested right exist to the writ petitioner to claim recognition. The regulation framed by the Society Management and methodology adopted by the Society Management is non arbitrary and reasonable. Hence, writ of mandamus to conduct secret ballot for recognition of Trade Union as sought for by the New Union itself is a misconceived prayer.

9. The RECSBU (Old Union), in its counter has contented that their Union was registered in the year 1950. Since 1968, it is recognised by the Society Management. Their Union is effectively espousing the cause of the employees. Mr.R.C.Cyril Thiagaraj, the Secretary of the New Union who represents the writ petitioner was erstwhile office bearer of the Old Union. He left the Old Union to start his own union to get into PF Trust. His intention for seeking secret ballot is not for the genuine interest of the employees. The Old Union still commands the support of majority employees and same has been proved to the satisfaction of the Society Management. If the request of the writ petitioner union/New Union is borne out of bonafide interest to protect the spirit of collective bargaining, he should have impleaded other registered Trade Unions. Hence, the relief sought for in the writ petition, without any right, is unsustainable. Merely because an individual wants to have election, the Society Management

cannot be forced to undertake the exercise of secret ballot, when there is no statutory right. It is also contended that the judgment of the Hon'ble Supreme Court in FCI Case reported in (1995 Supp (1) SCC 678) passed on consent is not applicable to the facts of the present case.

10. The learned single judge, after considering the rival submissions in respect of W.P.No.17101 of 2014 held as follows:-

"3. With the above said backdrop, the learned counsel appearing for the petitioner submits that as laid down by the Division Bench of this Court in **W.A.No.166 of 2011 (The Management of Foxconn (India) Pvt. Ltd., rep. by its Managing Director Vs. Podhu Thozhilalar Sangam, Kanchipuram and others)** dated 31.01.2013, the first respondent is the competent authority to conduct the secret ballot to decide the recognition of the Union concerned. The Division Bench has found that the check off system has lost its appeal. A combined understanding of the Trade Union Act read with Industrial Disputes Act mandates the first respondent to undertake the said exercise. The learned counsel submits that it is a case where the second and third respondents are acting in unison and therefore, it is imperative to allow the writ petition. Incidentally, it is submitted that the prayer

sought for in W.P.No.17101 of 2014 need not be gone into and therefore, the same may be closed. Hence, the writ petition in W.P.No.17101 of 2014 stands closed.”

11. In respect of W.P.No.615 of 2015 the learned Single Judge has observed as below and allowed the writ petition with directions extracted below:

“12. After all, it is a process of election between the rival Unions. The role of the second respondent is to assist the process. In that way, the second respondent will have to assist the first respondent. Merely because the check off system was followed earlier, it cannot be said that the same will have to be followed subsequently also, under all circumstances, especially, when the petitioner has started its Union recently and not being part of the system earlier. It is to be noted that when the check off system started, the third respondent was the sole Union. The procedural law being the hand maid of justice has to yield to the element of fairness required. When there is a doubt lingering in the mind of the petitioner, it would be better to delegate the duty to ensure that there is a fair election to a statutory authority. Thus this Court is of the view that the ratio laid down by the Division Bench referred to supra, which has also been

approved by the Apex Court by dismissing the Special Leave Petition in S.L.P.No.13275 of 2013, would apply to the case on hand as well.

13. Accordingly, the writ petition in W.P.No.1615 of 2015 stands allowed with the following directions:

1. The second respondent is at liberty to call for the particulars in terms of Regulation X(d), if so advised, within a period of two weeks from the date of receipt of a copy of this order.

2. The petitioner shall furnish the particulars in terms of the aforesaid provision within a further period of two weeks.

3. Thereafter the second respondent is at liberty to draw its own conclusion on the same.

4. The decision of the second respondent is subject to the decision of the first respondent.

5. Therefore, the first respondent shall call for the petitioner to produce the documents and satisfy itself qua the membership list.

6. Thereafter, the first respondent shall

conduct the secret ballot in tune with the judgment of the Division Bench.

7. Such election shall be conducted by the first respondent or through his officers as the case may be.

8. There is no need for continuing the check off system in the light of the directions issued above.

9. The entire process will have to be completed by the first respondent within a period of two months from the date of receipt of a copy of this order."

12. The judgment in W.P.No.1615 of 2015, with the direction to the Commissioner of Labour cum Registrar of Trade Unions to conduct secret ballot in tune with the judgment of the Division Bench of this Court in **W.A.No.166 of 2011 (The Management of Foxconn (India) Pvt. Ltd., rep. by its Managing Director Vs. Podhu Thozhilalar Sangam, Kanchipuram and others)** dated 31.01.2013, is now challenged by the Society Management and the old union in two different appeals for the following reasons:-

"a) The claim for secret ballot on the premise that check off system has lost its sheen, cannot be imposed on the Society

Management as the check off system is still valid and has been in existence in the Society Management;

b) The Society has a set of rules which was duly complied with and only after due verification of the membership of the Trade Union, the recognition was granted. The writ petitioner/New Union himself was an office bearer benefited through check off system;

c) Since Check off system being prevalent in the Society for a long time, the judgment in **MRF United Workers Union Rep. By its Secretary, Arakkonam vs. Government of Tamil Nadu and another** (2009 SCC Online Mad 2876), which favours check off system alone is applicable to their society.

d) When neither Section 3 of the Industrial Disputes Act nor Sections 9 A, 10 and 28 of the Trade Union Act mandates secret ballot as "only source" to find out the majority Union, reliance on the observation made in **The Management of Foxconn (India) Pvt. Ltd., rep. by its Managing Director Vs. Podhu Thozhilalar Sangam, Kanchipuram and others's** that check off system has lost its appeal and secret ballot is the only

alternate is erroneous;

e) when two alternative mode available under the scheme and both mode are held to be valid, court cannot impose a particular method contrary to the existing method and

f) the writ petition against the co-operative society touching upon its affairs is not maintainable. The relief sought is premature. The writ jurisdiction is invoked without exhausting the alternate remedy available under the statute.”

13. Heard Mr.R.Krishnamurthy, learned Senior Counsel appearing for the Soccity/appellant in W.A.No.768 of 2017 and the 2nd respondent in W.A.No.771 of 2017; Mr.A.L.Somayaji, learned Senior Counsel appearing for the appellant in W.A.No.771 of 2017 and the third respondent in W.A.No.768 of 2017; Dr.V.Suresh, learned counsel appearing for the second respondent/ New Union in W.A.No.768 of 2017 and the third respondent in W.A.No.771 of 2017 and Mr.V.Jayaprakash Narayanan, learned Special Government Pleader appearing for the first respondent in both the writ appeals.

14. The learned Counsels apart from canvassing the merits of their

respective cases, relied on the following judgments to buttress their point of arguments.

“(i) **Food Corporation of India Staff Union vs. Food Corporation of India and others** (cited supra);

(ii) **The Management of Foxconn (India) Pvt. Ltd., rep. by its Managing Director Vs. Podhu Thozhilalar Sangam, Kanchipuram and others** (cited supra);

(iii) **MRF United Workers Union Rep. By its Secretary, Arakkonam vs. Government of Tamil Nadu and another** (cited supra)

(iv) **Air India Employees Guild, Mumbai -vs- Air India Ltd, Mumbai and others.** - 2007 (1) LLN 491. (Bombay High Court, FB)

(v) **Shanmugam General Secretary, Labour Progressive Federation -vs- Govt. Of Tamilnadu and others** 2011 SCC online Mad 1519 . सत्यमेव जयते

(vi) **K.V.Sridharan -vs- S.Sundaramorthy** 2009(3) MLJ 1320. (Madras High Court DB)”

15. In the judgment which is impugned in these writ appeals, the learned single judge has relied upon **The Management of Foxconn (India) Pvt. Ltd., rep. by its Managing Director Vs. Podhu Thozhilalar**

Sangam, Kanchipuram and others case (cited supra) and has directed to follow the direction given in that judgment.

16. Therefore, the facts and findings capsulised in para 45 and 46 of the **Foxconn judgment** is extracted below:-

"45. The Management earlier wanted the Labour Department to ascertain as to which union has the support of the majority of worker so as to enable them to negotiate with the said union. This would give a clear indication that the request of the management was to evolve a mechanism to decide which union enjoys the majority support of workers. The appellant later informed the Labour Department that they have already ascertained the membership of the majority union and recognized the fourth respondent as the sole bargaining agent and entered into a long term settlement with them. The appellant has not produced any material before this Court to show as to how they have decided the majority issue. Mere production of records by the fourth respondent before the appellant without any opportunity to the first respondent to substantiate their contention regarding the majority support would not serve any purpose. In facts, it is the case of the first respondent that the majority of the workers have resigned from the fourth respondent union and joined their union. Therefore, it is all the more necessary for the appellant to ascertain as to whether the fourth respondent actually command the support of the majority of workers. The request made by the first respondent for election has to

be considered in the light of the request made by the appellant to the Labour Commissioner to help them to identify the majority union.

46. In case a sole bargaining agent is elected by a rational method, it would enable the workers to ventilate their grievances through one agent instead of so many agents, canvassing different points and taking different positions. The management also would be in a position to settle the matter by negotiating with a single union, commanding majority support of workers."

17. On tracing the march of law on this issue, we see:

In **K.V.Sridharan -vs- S.Sundaramorthy** 's case, the division bench of this Court held as follows:-

"3....The said Act does not make any provision for recognition of such a union. Any recognition of union, even if it is a union relating to the employees of the Central Government, is governed by some departmental circulars. Those circulars are administrative in nature and not statutory. Therefore, those circulars also cannot be enforced in a writ petition. However, unfortunately, with regard to disputes arising out of the conduct of elections of such trade unions for electing its Office Bearers, various writ petitions are filed before this Court and some of them are entertained. But in none of these cases, this question has ever been discussed. At least, no such decision has been brought to the

notice of this Court.

"5....It may be noted in this connection that these private bodies are not enforcing any statutory direction by filing such writ petitions inasmuch in the State of Tamil Nadu, there is no law relating to grant of recognition to a trade union, nor is there any law relating to holding of election of such trade unions...."

18. Following **K.V.Sridharan -vs- S.Sundaramorthy** 's case, in **Shanmugam General Secretary, Labour Progressive Federation -vs- Govt. Of Tamilnadu and others** case, the learned single judge has observed that the question of granting of recognition of the trade union in the State of Tamilnadu is not based upon any statutory right.

19. After observing so, the learned judge has also extracted the criteria for recognition of unions under the code of discipline. It is appropriate to reproduce the same hereunder for better understanding of the law governing the matter relating to recognition of Trade Union in the State of Tamil Nadu.

"31.The question of granting of recognition of the trade union in the State of Tamil Nadu is not based upon any statutory right and that it has already

been noted by a division bench of this court in K.V.Sridharan's case (cited supra). Ever since the Code of Discipline adopted in the tripartite labour conference was utilized. Since in the absence of any law in the trade union recognition and any recognition granted by any employer is only based upon the code of discipline evolved in a tripartite labour conference. The said code in relation to the criteria for recognition of the union may be reproduced as follows:

"Criteria for recognition of Unions :

1. Where there is more than one union, a union claiming recognition should have been functioning for at least one year after registration. Where there is only one union, this condition would not apply.

2. The membership of the union should cover at least 15% of the workers in the establishment concerned. Membership would be counted only of those who had paid their subscriptions for at least three months during the period of six months immediately preceding the reckoning.

3. A union may claim to be recognized as a representative union for an industry in a local area if it has a membership of at least 25% of the workers of that industry in that area.

4. When a union has been recognized, there should be no change in its position for a period of two years.

5. Where there are several unions in an industry or establishment, the one with the largest membership should be recognized.

6. 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 per cent 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 members. All other workers who are not members of that union might either operate through the representative Union for the industry or seek redress directly. सत्यमेव जयते

7. In the case of trade union federations which are not affiliated to any of the four central organization of labour the question of recognition would have to be dealt with separately.

8. Only unions which observed the Code of Discipline would be entitled to recognition."

20. In **MRF United Workers Union Rep. By its Secretary, Arakkonam vs. Government of Tamil Nadu and another'** case (cited supra) , the division bench of this court after discussing **Food Corporation of India Staff Union vs. Food Corporation of India and others** case (cited supra) and **Automobile Products of India Employees Union -vs- Association of Engineering Workers Bombay (AIR 1999 SC 625)** has held that,

"37. Having noted this scenario and considering that there is continuous strife in the company, in our view, the Court cannot simply remain a silent spectator. We are aware that the Court has its own limitations while exercising jurisdiction to issue appropriate writ or direction. On analyzing the provisions of [Article 19\(1\)\(c\)](#), it recognizes the right to form association and also the mandate of [Industrial Disputes Act](#) that there should be recognized union and when there is a inclination of the State Government to accept a particular procedure, which is otherwise also accepted in different statutes throughout the country, in our view, the correct course will be to give a direction to the Commissioner of Labour to call upon the two unions to submit their membership details as per the Code of Discipline and examine their

membership as provided under the Code over a period. In the event, there are any objections, the objections could be verified in the light of clause-7 of the Code of Discipline by personal interrogatories so as to arrive at the correct membership of either of the two trade unions. Alternative to this procedure namely, ballot system, which, although is recommended by the Committee of the ILO, is not accepted in any of the statutes which have been brought to our notice. The recommendations of the Committee can only be respected to this effect that there has to be a collective bargaining agent of the workmen, which is to be a truly and independent representative agent. As far as the methods suggested by the Committee is concerned, it would result into determination on the basis of the facts arrived at a particular point of time, which has not been very much appreciated as a proper method. The method of verification on the other hand will show the following of a particular union over a longer period and would definitely be a better option. The other alternative approach is to say that none of the methods is recognized and therefore the choice of the management will prevail. That certainly cannot be permitted in view of the provisions of the fifth schedule of the Act. The Code of Conduct has a force of acceptance of the organizations of the workers and of the Management and also of the Government, and is being followed in

different undertakings. Further, it is also in tune with the provisions of the different statutes in different States.”

21. Later, in **Foxconn** case (cited supra), the Division Bench of this Court has distinguished the **MRF** case on facts and given reason for the same as under:-

“34.The observation of the Division Bench in MRF United Workers Union was on the basis of the law laid down by the Supreme Court in Automobile Products of India Employees' Union v. Assn. Of Engineering Works (1990 (S) SCC 444)

35.In Automobile Products of India Employees' Union the issue before the Supreme Court was relating to the validity of the procedure adopted by the Industrial Court for granting recognition de hors the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Act contains a specified procedure for conducting verification of membership. Election by secret ballot was not a procedure recognized by law. It was only under such circumstances, the Supreme Court observed that Court cannot allow the parties to circumvent the provisions of the Act.”

Also further observed that,

"37.The Code of Discipline has indicated a procedure to verify the membership of the Union. That does not mean that the said procedure should be followed in its letter and spirit in spite of proving that the method has lost its appeal."(emphasis added)

22. To have a holistic view, apart from these judgments, the regulation of the society governing grant of Recognition to a Trade Union and the official memorandum issued by the Union of India through Ministry of Labour and Employment dated 08.04.2011 regarding verification of strength of membership of Trade unions are other relevant materials to be looked into. Hence the relevant portion of it are also extracted below:-

Regulation Governing Grant of Recognition to a Trade Union in the Society:-

Clause X General Guidelines:

- a) -----
- b) -----
- c) The trade union which seeks recognition/renewal of recognition should apply in writing, to the Chief Executive of the Society, giving details of the registered number, registered Address, names of office

bearers, membership list, the latest annual return filed before the Registrar of Trade Unions and a specific declaration from the general secretary of the trade union that the said trade union will abide by the code of discipline envisaged in this regulation.

d) Recognition shall be granted to only one union in the society, which should be a registered trade union, based on the membership list produced by the union, which is having highest number of members. The society shall have the right to verify the membership register and or ask for the membership application forms to be verified, for the purpose of ascertaining the correctness of the membership list/ membership register so produced. The decision of the society in this regard shall be final and binding in all aspects"

23. In Official Memorandum of Government of India, Ministry of Labour and Employment- dated 08.04.2011, para 4 reads as under:

4. Based on the general consensus of the representatives of the CTUOs who attended this Meeting the following guidelines have been prescribed and communicated to all concerned for strict compliance:

(i) For Verification of membership of Trade Unions in any establishment, the existing method adopted (Check Off or Secret

Ballot System) would be permitted to be continued and the existing recognised Union would not have any veto power to stop that method.

(ii) In case however, there is a demand for change in the method of verification (i.e., from Check Off to Secret Ballot System and vice versa), this can be adopted only if consent of all the parties is available.

(iii) Consultations should continue so that a wider consensus is achieved through the ILC forum. Amendments in the Code of Discipline will also be deliberated upon and decided in that Forum.

24. On cumulative reading of the law and regulation of the Society governing the issue in the light of the various judgments rendered on this point, we find that in Shanmugam case, when the recognised union sought for a negative mandamus not to invite any other union for negotiation during the period of its recognition, learned single judge of this court taking note of the judgments rendered in **FCI** case, **Air India Employees Union** case and **MRF** case has reinforced the principle that when secret ballot is not part of any statutory requirement under law, verification method (check off system) contemplated in Code of Discipline will prevail, i.e. verification method has to be followed while granting

recognition.

25. In **Foxconn** case, the Division Bench has observed that Code of Discipline has indicated procedure to verify the membership of the Union. That does not mean that the said procedure should be followed in its letter and spirit in spite of proving that the method has lost its appeal.

(emphasis applied).

26. Thus it is to be noted that, in **Foxconn** case the division bench has given predominance to secret ballot since it was satisfied that in that case verification method (check off system) has been proved to have lost its appeal. In the said circumstances, it has issued certain direction regarding secret ballot.

27. The expression used by the Hon'ble Supreme Court in the introductory paragraph of the **FCI** judgement that, the check off system has lost its appeal is not a ratio decidendi. It cannot have universal application in all inter union dispute irrespective of specific facts relating to the dispute. In **FCI** case, the supreme court has issued direction for secret ballot on consent of the parties. In **Foxconn** case the Division Bench deviated from the **MRF** judgment in view of peculiar fact situation, which has been stated in para 37 of that judgment which has been extracted earlier in this judgment. Thus secret ballot shall be ordered if parties consent for it or if situation warrants and proved that check off system has lost its appeal. In the absence of either of the above situations, court

should allow the employer and the employees to follow the provisions of Trade Union Act, Industrial Dispute Act , Regulations and the Code of discipline governing the affairs of the Union. Court cannot venture upon substituting something not found in the Rule unless in extraordinary circumstances, in order to bring industrial harmony and not otherwise.

28. In the case in hand, the factual aspect as pleaded and narrated above, we find no material to infer check off system has lost its appeal. Except the 2nd respondent Union none other union has sought for secret ballot. The verification method followed by the Society is in accordance to regulation and code of discipline and had been in vogue for decades. While so, without any strong reason to deviate from the settled procedure, just for the wish of the writ petitioners, court cannot substitute a procedure not specifically contemplated in law. Further, the claim of the new union that it commands majority members could be very well proved through verification method itself and it is not necessary to undergo the exercise of secret ballot just for asking. It appears till date the new union has not attempted to prove its membership by furnishing the applications of its members.

29. Unfortunately, the Learned Single Judge has lost sight of these facts and erroneously allowed the writ petition. Hence the direction issued

in writ petition under appeal warrants interference. Accordingly, the judgment of the learned Single Judge is set aside.

30. Regarding the question formulated for consideration, the response of the Court is as follows:

i) The expression of the Hon'ble Supreme Court in FCI Case about "check off system" made in a different context, cannot be taken out of context and read down in all cases.

ii) The demand for change of method of verification from check off system to secret ballot can be allowed under two circumstances i) by consent of all the parties or ii) if the check off system is proved to have lost its appeal in the facts and circumstances of that case.

iii) Direct or immediate intervention of the High Court under Article 226 of the Constitution in management – workmen disputes should be only in case of extraordinary circumstance or in case of proven failure of dispute at the lower level of hierarchy.

In this case, we find the writ petitioner union has not even properly furnished the list of members along with other documents of his supporters

to the Society. Without even furnishing the details of the members the writ petition has been filed and same has been entertained.

iv) Selection of employees representative to the working committee and identifying majority union are not one and the same. Under the Industrial Disputes Act, election is prescribed for choosing the employees representative for Working committees. For the said purpose, cutting across the allegiance to any trade union, an employee can choose his representative for working committee. Whereas the identification of majority union is not pertaining to individuals but regarding Collection of individuals called Union which is going to negotiate with the management on behalf of all the employees, hence it falls entirely under different footing. Just because employees are not alien to secret ballot system, court cannot force upon them the secret ballot system, more so when a different scheme is in practise successfully.

v) During negotiation, the management should be rest assured of the fact that they are negotiating with the union commanding majority support and the union should also be sure of the fact that they are the representatives of majority. In the ordinary course of conduct of business, check off method will ensure the above said twin requirements. While secret ballot system is momentary and one time affair, it cannot be a true

reflection of continuous allegiance to a particular union. Whereas the check off system is the foolproof method to verify continuous allegiance.

31. The learned counsel appearing for the writ petitioner union / second respondent in the writ appeals pleaded that, for collective bargain, secret ballot is the best method to identify the majority union. We are unable to accept this view, for a congenial industrial atmosphere, transparency is preferable rather than secrecy. Anything in secrecy is looked down with suspicion. Verification 'by check off system' which is more transparent must have been the first option of the Union which believes in transparent collective bargain. In respect of the subject Society a open , transparent and verifiable method is in place and followed for decades. While so, why should it be altered just because in one case parties consented for secret ballot or in some other case the court has felt that check off system has lost its sheen or in yet another case it is proved to be lost its appeal.

32. Further, going through the facts of this case, we find that the second respondent union (RECSSU) has been formed in the year 2012, after the old Union was granted recognition as majority union in the year 2011. The said recognition is valid for a period of 6 years. After the Trade Union Amendment Act 31 of 2011 which has inserted section 9A and 10 (C) to the Trade Union Act, 1926 any registered trade union should at all times

continue to have not less than ten percent or one hundred of the workmen, whichever is less, subject to minimum of seven, engaged or employed in an establishment or industry with which it is connected, as its members. The Registrar of Trade Unions can cancel the registration if he is satisfied that a registered Trade Union ceases to have the requisite number of members. Therefore, it has now become an imperative on the part of the Trade Unions as well as the Registrar of Trade Unions to keep record of the number of its members at all times. In the said factual and legal scenario nothing prevents the new union from submitting details of its members and demonstrate its strength through verification method.

33. Also it is pertinent to record that, in the counter affidavit of the Society it is averred that , in the proceedings initiated by the writ petitioner union before Assistant Labour Commissioner for 'protected workman status' to 13 of its members, the society called for the members detail from all the 4 registered registered trade unions, for which except the old union having 753 members, none of the other three trade unions including the writ petitioner union furnished particulars. This averment is neither denied nor controverted. This leads to the presumption that, the Writ Petition Union is shy of disclosing its membership list fearing exposure of its claim regarding the membership strength .

34. As pointed out earlier, whenever the facts have warranted deviation from settled practice, court has interfered. In all other cases, court has declined to deviate the settled practise. In this case we find no reason or justification for directing secret ballot byepassing the terms laid under clause X (c) and (d) of Regulations Governing grant of Recognition of a Trade Union in the Society. Hence the judgement of the Learned Single Judge, directing the contrary is hereby set aside.

35. In the result, **the Writ appeals are allowed.** No costs. Consequently, connected miscellaneous petitions are allowed.

(H.G.R.J.,) (G.J.J.,)
.08.2017

jbm

Index :Yes

Speaking order/Non-speaking order

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To

1.The Commissioner of Labour cum
Registrar of Trade Unions,
Office of the Labour Commissioner,
DMS Complex,
Teynampet,
Chennai – 6.

2.Railway Employees' Co-operative Society
Staff Union (Reg No.3432/CNI),
Rep. By its Secretary, R.C.Cyril Thiagaraj,
No.2/30, Lettangs Road,
Vepery, Chennai – 600 007.

3.Railway Employees Co-operative
Bank Staff Union (Regn.1131)
Rep. By its General Secretary,
No.5/5, V.O.C Nagar Main Road,
Anna Nagar East, Chennai – 600 102.



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**HULUVADI G.RAMESH.J.,
AND
G.JAYACHANDRAN.J.,**

jbm



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W.A.Nos.768 & 771 of 2017

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17.08.2017