

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2017

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.Nos.17101 of 2014 and 1615 of 2015
and
M.P.No.1 of 2014

Railway Employee Co-operative Staff Union
rep. by its Secretary
R.C.Cyril Thiyagaraj .. Petitioner in
both the W.Ps

Vs.

1. Employees Provident Fund Organisation
rep. by its Regional Provident Fund
Commissioner (Exemption),
Regional Office,
No.37, Royapettah High Road,
Chennai - 14.

2. Board of Trustees
M/s. Railway Employees Co-operative
Credit Society Staff Provident Fund,
C/o. Railway Employees Co-operative
Credit Society Ltd.,
Ashok Vihar Complex,
Old Zoo Road, Chennai - 3.

3. The Chief Executive,
Railway Employees Co-operative
Credit Society Ltd.,
Ashok Vihar Complex,
Old Zoo Road, Chennai - 3.

.. Respondents in
W.P.No.17101
of 2014

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

2.The Chief Executive,
Railway Employees Co-operative
Credit Society Ltd.,
Ashok Vihar Complex,
Old Zoo Road, Chennai - 3.

3.Railway Employees Co-operative
Bank Staff Union rep. by its
General Secretary

.. Respondents in
W.P.No.1615 of
2015

(R3 impleaded as per order dated 24.02.2016
in W.M.P.No.5998 of 2016 in
W.P.No.1615 of 2015)

W.P.No.17101 of 2014: Petition filed under Article 226 of
The Constitution of India praying to issue 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: Petition filed under Article 226 of
The Constitution of India praying to issue 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 Unions.

For Petitioner .. Ms.D.Nagasaila
in both the W.Ps

For Respondents .. Mr.R.Krishnamoorthy,
Sr. Counsel for
Mr.A.Jenasenan for R2 & R3
in W.P.No.17101 of 2014
and for R2 in W.P.No.1615 of 2015
Mr.S.Diwakar,
Spl. Govt. Pleader for R1
in W.P.No.1615 of 2015
Mr.C.K.Chandrasekar for R3
in W.P.No.1615 of 2015

COMMON ORDER

The petitioner Union being one among the four unions operating under the second respondent, has come forward to file these writ petitions, seeking a direction to the first respondent to determine the relative strength of them through a secret ballot and to direct 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.

2.The third respondent is the present recognised Union having obtained the said status under the Trade Union Act. This status has been achieved through the check off system. The petitioner Union is stated to be broken away one from the third respondent few years back and now claims to be in majority and therefore seeks the relief. Needless to state that the petitioner Union has not come under the check off system. Incidentally, the term of office of the third respondent qua the recognition under the Trade Union Act comes to an end by the end of this month.

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.

4.Learned senior counsel appearing for the second respondent would submit that as per the Regulation governing the recognition of Trade Unions, the petitioner has to give its membership list and thereafter, the second respondent shall have the right to verify the same and or ask for the membership application. Though the petitioner has given the list of members, it has not been followed up with the requisite

particulars. Therefore, the petitioner will have to be directed to complete the said exercise.

5. Learned counsel appearing for the third respondent would vehemently contend that the ratio laid down by the Division Bench in the writ appeal referred to above, has to be seen in its own context, especially, when the management has consented earlier to go through the process of secret ballot. Check off system has been in vogue for quite number of years. The third respondent is a recognised Union for decades. There is no material to dispense with the earlier system. In the absence of any material to hold that the earlier system is not working well or tainted with arbitrariness, the relief sought for cannot be granted.

6. The basic facts governing the case are not in dispute. The recognition granted in favour of the third respondent comes to an end by the end of this month. That there are more than one Unions other than the third respondent is not in dispute and the petitioner is one among them. What the petitioner wants is a process under the aegis of the first respondent to identify the recognised Trade Union among the existing ones.

7. The Regulations governing the Recognition of Trade Unions in the Society dated 25.03.2011 has to be seen in consonance with the provisions contained under the Trade Union Act read with Industrial Disputes Act. Much reliance has been made on the general guidelines with specific reference to guideline X (d), which reads as follows:

X. (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.

8. There is no difficulty in appreciating the said guideline which says that recognition shall be granted to only one Union in the society which everybody agrees. The contention is with respect to the follow up action on a membership list. A membership list has to be given by the Unions to the Society viz., the second respondent. The Regulation merely mandates and reiterates the rights of the society to do the verification of

the membership register and or in the alternative, ask for the membership application form that is also for the purpose of verification. This verification is only for the purpose of ascertaining the correctness of the membership list/ membership register to be produced. Therefore, the entire verification is only for the purpose of checking the membership list. After all, the object is nothing but to select the majority Union. Therefore, the role of the second respondent in this inter se fight between the Unions is very limited. It merely lends its support to the process of selection.

9. There is no difficulty in holding that even in the event of any conflict between the regulation on the one hand and the two enactments on the other hand, the latter would prevail. A Court of law has to read the regulation in consonance with the enactment. The regulation is nothing but a part of the procedural law. The compliance is required for the petitioner only when there exists a doubt in the mind of the society viz., the second respondent on the membership given. In that eventuality, the Union which has given a list will have to be asked to give its register or the membership application forms for verification. Such a situation has not arisen as the petitioner has given its list. If the second respondent is of the view that the membership list has to be verified, it is well open to it to call for the particulars as per Regulation X(d) from the petitioner. In such an eventuality, the petitioner will have to furnish it to the second respondent. Regulation X(d) which says about finally on the decision has to be seen in its own context. As stated above, the role of the second respondent is very limited. Ultimately, everything has to be done under the aegis of the first respondent. Therefore, it can be stated that the petitioner will have to comply with the requirement of Regulation X(d), any decision to be made by the second respondent will be subject to the final decision of the first respondent, especially when the petitioner has raised doubts on the credibility of the second respondent. This Court is not willing to go into the allegations and counter allegations. Suffice it to give liberty to the second respondent to ask the particulars in tune with Regulation X(d). As and when such request is made, the petitioner has to comply with it duly. Thereafter, the second respondent can take a decision which shall not be binding on the first respondent, who has to take an independent decision by asking the petitioner to clarify it.

10. Coming to the contention raised by the learned counsel appearing for the third respondent, the following paragraphs of the division bench judgment would be apposite:

24. The provisions of the Trade Unions Act would go to show that there is a statutory obligation on the part of the Registrar of Trade Unions to verify the membership of the union. Similarly, there is a statutory duty on the part of the registered Trade Union to prove that the union still commands the support of required number of workers. It is therefore clear that in the matter of membership, the Registrar is entitled to verify the factual position and the union is bound to prove that it has got the required members on its roll.

27. The Trade Unions Act and the Industrial Disputes Act therefore contains string of provisions giving various rights to the workers. The Trade Unions Act gives right to the Registrar to verify the membership of the Trade Union at any time to ensure compliance of Section 9 of the Act. Since Section 10 (c) of Trade Unions Act provides for cancellation of the recognition of Trade Union, it is always possible for a rival union to produce materials before the Registrar that a particular registered Trade Union ceased to have the required membership and in which case, the Act casts a duty on the Registrar to verify the factual position. The Industrial Disputes Act contains provisions for electing the representatives of workmen in the statutory works committee by secret ballot method. Therefore, conduct of election by secret ballot is not alien to the I.D. Act.

32. Appendix IV of the Code of Discipline provides for a verification process for ascertaining the membership for the purpose of recognition of unions. It is true that no other procedure was prescribed under the Code of Discipline. The dispute now is in respect of the mode of such verification process. The question is whether the procedure indicated in the Code of Discipline must be followed in spite of the observation of Supreme Court in Food Corporation of India Staff Union, that the check-off system has lost its appeal.

47. The laws regulating the rights of workers must be interpreted in a purposive manner and with a social objective of promoting industrial harmony. The Courts must be guided by the directive principles of State Policy set out in Part IV of our Constitution in interpreting the laws. The interpretation of labour legislations in a matter of this nature must be in the

light of Article 43-A of the Constitution, ensuring participation of workers in management of industry.

11.The Division Bench has already been taken note of the issue in MRF United Workers Union rep. by the General Secretary Vs. Government of Tamil Nadu and others (W.A.No.674 of 2009 dated 08.09.2009). Therefore, this Court is of the view that reliance made upon the earlier judgment by the learned counsel for the third respondent would not help the case.

12.These paragraphs leave no doubt in the mind of this Court about the predominant role to be played by the first respondent. 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.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Regional Provident Fund
Commissioner (Exemption),
Employees Provident Fund Organisation,
Regional Office,
No.37, Royapettah High Road,
Chennai - 14.

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

+2cc to Mr.A.Jenasenan, Advocate Sr.21376
+1cc to Mr.D.Nagasaila, Advocate Sr.21404
+2cc to Mr.C.K.Chandrasekar, Advocate Sr.21375

W.P.Nos.17101 of 2014 and 1615 of 2015

pvs[col]
srg 27/04/2017