

(2006) 12 BOM CK 0048
In the Bombay High Court
Case No : Writ Petition No. 2544 of 2004

Air India Employees Guild

APPELLANT

Vs

Air India Ltd. and Others

RESPONDENT

Date of Decision : 21-12-2006

Acts Referred:

Constitution of India, 1950 — Article 141
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 10, 11, 12, 13, 14

Citation : (2007) 2 ALLMR 78 : (2007) 1 BomCR 529 : (2007) 109 BOMLR 1 :
(2006) 108 FLR 879 : (2007) 2 LLJ 217 : (2007) 1 MhLj 659

Hon'ble Judges : V.K. Tahilramani, J;F.I. Rebello, J;A.S. Oka, J

Bench : Full Bench

Advocate : Ashok Shetty and Rita Joshi, in Writ Petition No. 2544 of 2004 and S.J. Deshmukh and N.M. Ganguli, in Writ Petition No. 1452 of 2005, for the Appellant; C.U. Singh and M. D'souza, J. Saluja and A. Rehman, instructed by M.V. Kini and Co. for R. No. 1, S.S. Pakale, R.C. Mater and Y.R. Mishra for R. Nos. 2 to 5, A.G. Damle, for R. No. 9, P.M. Palashikar, for R. No. 12, S.M. Dharap, instructed by Neel Helekar, for R. No. 17, Mohan Bir Singh, for R. No. 16, Rajesh Gehani, for R. No. 8 and J.P. Cama and K.P. Anilkumar, for R. No. 14 in Writ Petition No. 1452 of 2005, for R. Nos. 1, 3, 5, 6 and 7 in Writ Petition No. 1452 of 2005 and S.K. Talsania for R. No. 1 and Ashok Shetty and Rita Joshi, for R. No. 4 in Writ Petition No. 1452 of 2005, for the Respondent

Judgement

F.I. Rebello, J.—A learned Division Bench of This court while hearing the above petitions, doubted the correctness of the view taken in Oil and Natural Gas Commission Karmachari Sanghatana v. Ministry of Petroleum and Ors. in Writ Petition No. 1785 of 1997 and also found other contentions urged before it were of great importance and arose in a number of matters and accordingly referred these matters for consideration to a larger Bench. The questions of law formulated and referred for our consideration are as under:

(1) Whether the ratio of the judgment of the Supreme Court in Automobile Products of India Employees Union v. Association of Engineering Workers Bombay

and Ors. 1990 2 CLR 344 and the Judgment (of the Division Bench of This court) in Association of Engineering Workers v. Dockyard Labour Union and Ors. 1993 1 CLR 637 and the judgment of the (Division Bench of This court) in Association of Engineering Workers v. Dockyard Labour Union 1992 2 CLR 382 applies to the verification of membership of Union in establishment governed by the Code of Discipline and whether it applies only to cases under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act?

(2) Whether the method of secret ballot to ascertain majority is derogatory to the Code of Discipline?

(3) Whether the judgment of the Division Bench of This court in Oil and Natural Gas Commission Karmachari Sanghatana v. Ministry of Petroleum and Ors. in Writ Petition No. 1785 of 1997 was correctly decided?

(4) Whether the method of secret ballot to ascertain majority of membership would in the facts of this case be arbitrary?

2. The Petitioner in Writ Petition No. 2544 of 2004 is a trade union registered under the Trade Unions Act, 1926 and presently is the sole recognized trade union for the ground category staff employed with Air India which claims membership of more than 10,000 or over 70% of the total employees. It has its registered office at Santacruz, Mumbai. They have filed the petition to challenge the decision of Respondent No. 2 to hold elections by secret ballot to verify the membership of the technical and non technical ground category staff in Air India. The Petitioners oppose the holding of a secret ballot for the purpose of verification of the membership being contrary to the Code of Discipline governing the industry.

The petitioner in Writ Petition No. 1452 of 2005 is also a trade Union registered under the Trade Unions Act. This Petitioner, earlier was the only union representing the employees employed in Air India as well as Indian Airlines. They continue to represent employees employed in the said two undertakings even as of now. They contend that they along with the Air India Employees Union and Air India Employees Guild represent all categories of employees employed by Respondent No. 1. Apart from them, there are other unions which represent different categories in various trades. Though initially they had agreed to participate in the secret ballot, they protested on the non inclusion of their names on the ballot paper. By the present Petition, however, they are impugning the notification of 24.3.2005 directing holding of secret ballot for verification of the membership of the unions representing the ground staff of Air India.

3. The Chief Labour Commissioner (Central), New Delhi had informed the Regional Labour Commissioner (Central) Mumbai that the Ministry had decided to undertake verification of membership of unions operating in Air India. The Regional Commissioner was called upon to undertake verification of membership of unions operating in Air India and provide amongst others:

(1) consent of the Management and all the Unions concerned for holding secret ballot for the purpose

(2) consent of both the managements and all the unions for secret ballot being conducted under the supervision of CIRM officers in the Central Sphere.

(3) Undertaking from Management and also all the Union(s) that they will accept the result of such secret Ballot as binding and

(4) Undertaking from the Management that they will accord recognition on the basis of the verdict of the Secret Ballot and their consent has already been obtained by the Government.

4. By communication of 14.1.2004, the Ministry of Labour, Government of India informed the Unions listed therein, that the Government had decided to undertake verification of membership of Unions operating in Air India, through Secret ballot. They were required to furnish information in the proforma which was enclosed. Subsequent to that, office of the Regional Labour Commissioner held several meetings for drawing up the procedure for holding verification by secret ballot. By notification dated 24.3.2005 the schedule of holding secret ballot was declared. The General Secretary, Air India Service Engineers Association was informed by the Ministry of Labour that under the Code of discipline approved by the Government of India, it was not possible to conduct verification of membership of their Association as it is a craft union. It may be mentioned that in the past by notification dated 26.6.1986, the Chief Labour Commissioner at the instance of the Ministry of Labour and upon consent of the Management of Air India and the Unions operating amongst technical and non technical category had organized a secret ballot on 16th and 17th May, 1986 to determine the relative strength of (i) Air India Employees Guild vis a viz Air Corporation Employees Union in regard to non technical categories of employees and certain technical categories and (ii) Air India Employees Guild vis a viz categories excluding those covered by (i) above for the purpose of conferring recognition on the majority Union. The department of Civil Aviation was advised Air India, to confer recognition on the Air India employees Guild which has emerged as the majority union in respect of both categories, for a period of two years under the Code of Discipline. From the record it appears that Air India employees Guild have opposed the holding of secret ballot for verification of a membership as being contrary to the Code of Discipline.

5. Let us now consider the issues that have been referred to us. In the first instance, it would be appropriate that we consider Question No. 3, as to whether the judgment in O.N.G.C. Karmachari Sanghatana (supra) was correctly decided. A Writ Petition came to be filed by O.N.G.C. Karmachari Sanghatna, claiming that the issue as to which is the union commanding majority of membership should be decided by secret ballot. This was opposed by the rival unions pointing out that secret ballot is not known to the Code of Discipline, which has prescribed the method of verifying membership and the method of verification alone, should be

adopted. A learned Division Bench, noted that the Appendix III of the Code of Discipline prescribes the procedure to ascertain who has the majority of membership by physical verification of the membership by the authority concerned. The learned Bench however, noted that the Sanghatana had contended that this device is not completely free from defects and is capable of manipulation and there can be extraneous considerations, for the members while invoking their choice and in view of that secret ballot should be one of the methods which is less vulnerable. The attention of the learned Bench was invited to the Judgment in Automobile Products of India Employees Union v. Association of Engineering Workers, Bombay (supra). The learned Bench noted that the dictum laid down therein was that the procedure should not be completely derogatory to the scheme of the Act. The learned Bench then posed to itself a question, as to whether the method of secret ballot, if adopted, to ascertain the majority of membership would be derogatory to the Code of Discipline. It observed that the predominant feature of the Code of Discipline is to provide for recognition, on the basis of the criteria of majority. How to ascertain majority is incidental to the main Scheme. Reliance was then placed on the judgement in Food Corporation of India Staff Union Vs. Food Corporation of India and others, . The learned Bench observed that the Supreme Court had occasion to consider this aspect. The observation of the Supreme Court that the method of secret ballot is being gradually accepted was noted and the learned Bench proceeded to hold that the claim of the Petitioners to adopt the device of secret ballot for ascertaining the majority is therefore, justified and accordingly issued direction for ascertaining majority membership of the Union by secret ballot.

6. In Food Corporation (supra), parties consented to follow the secret ballot system for assessing representative character of the trade unions. This has been noted by the judgment of the Division Bench of This court in Marmagao Port Trust M.O.H.P. v. Chairman Marmagao Port Trust (Panaji Bench) in Writ Petition No. 9 of 2000 decided on 3.7.2000. This has also been noted by the Division Bench of the Madras High Court in the case of the Southern Railway Mazdoor Union v. The Railway Board and Ors. decided on 17.10.2003 in Writ Petition No. 3168 of 2002. The Judgment therefore, in Food Corporation of India (supra) being by consent, does not lay down any law. What is binding is the ratio descend.

7. Once the code of discipline is applicable to the industry, it is that Code that must be followed. The Code of Discipline does not provide for determining the majority character of the union by secret ballot. Is it then open to a court exercising its extra ordinary jurisdiction to substitute a procedure for determining the representative character of the Union by one not provided for by the code of discipline and not agreed to by all the relevant Parties. The Judgment of the Division Bench proceeded on the assumption that the predominant feature of the Code of Discipline was to provide for recognition on the basis of criteria of majority and how that majority can be ascertained was incidental to the main scheme and that the device of secret ballot would not be derogatory to the

scheme of the Code of Discipline. What the court did was to read a procedure for determining the majority character of the union not provided for by the code of discipline. The learned Bench also did not examine the procedure laid down in the Code of Discipline to test the argument whether the method of secret ballot was in consonance with the procedure for verification of membership to determine the majority character of the Union. This important aspect was neither considered nor answered by the learned Division Bench. We will refer to that procedure whilst answering the other questions, which have been referred. Once the Code of discipline applies to the industry and the parties had agreed to follow the Code of Discipline, it is really not open to a court, to substitute its judgment in place of the agreed procedure for ascertaining the majority of the Union as provided for in the Code of discipline, whatever may be the merits or demerits of the verification procedure. The right to provide a methodology is in the legislature and failing legislation in the executive. A writ court can issue direction so as to make the relief to be granted effective. It cannot however, by its judgement decide as to what is the best method when the method is already laid down by a competent organ under the Constitution. At the highest, if the method is challenged, it can if grounds are available, declare the same as being unconstitutional. In our opinion, the law as laid down in O.N.G.C. is contrary to the procedure for verification of membership as provided for in the Code of discipline and consequently the judgment in O.N.G.C. stands overruled.

8. Question No. 1 may now be considered and answered. In the first instance, we may refer to some aspects of the Code of Discipline. The Code of Discipline lays down criteria for recognition of unions by the Management and is purely voluntary. This was in terms of the resolution adopted by the Indian Labour Conference. This was adopted by all major public sector undertakings and the various labour Federations. A procedure for verification of membership of unions to determine their representative character was also approved by the Standing labour committee. All this has been brought together in the form of a brochure. The Code of Discipline provides for recognition of (1) A Union claiming to be recognized as representative Union for an industry as a whole in the local area or (2) claiming recognition as the majority union in an establishment. The procedure for recognition is set out in Paragraphs 4 to 8 of the said code. It is not necessary to reproduce all those clauses, but we may refer to clauses pertaining to membership. Clause (9) reads as under:

Membership of a union for the purpose of recognition is to be counted only of those workers who had paid subscription for at least 3 months during the period of 6 months immediately preceding the date of reckoning. The "date of reckoning" is the first of the month in which verification work begins, i.e. when the verification officer asks the unions to submit their lists and books for scrutiny.

Clause (11) reads as under:

If more than one union function in an establishment, it is necessary to verify the representative character of the various unions. The verification has to be done

either by the concerned Implementation Officer or an officer of the Central or State Industrial Relations Machinery. A procedure to be followed for ascertaining the membership of the unions has been laid down by the Standing Labour Committee; its details are given in Appendix III. The results of the verification are to be intimated to the Management which would accord recognition to the majority union.

Annexure I lays down the criteria for recognition of the unions. Clause II of the said criteria requires that the membership of the union should cover at least 15% of the workers in the establishment concerned. The membership would be counted only of those who had paid their subscription for at least three months during the period of six months immediately preceding the reckoning. Appendix III lays down the procedure for verification of membership of unions for the purpose of recognition under the Code of Discipline. The important highlights of the provision of verification is that the implementation machinery at the Centre will request the Chief Labour Commissioner to arrange verification of membership of unions entitled to recognition under the Code. In the States, either the Implementation Officer will carry out this verification or get it done through the State Labour Commissioner, depending on the practice obtaining in each state. The Verification officer has to call on the Unions to produce a list of those members who had paid subscription for at least three months within the period of six months immediately preceding the date of reckoning along with various documents. The date of reckoning would be the month from which the verification begins i.e. when the verification officer asks the unions to submit their lists and books for scrutiny. The procedure which the office must adopt for verification by checking the list of membership is then laid down. Once that is done, the Officer has to intimate to the Unions the list so prepared and call upon them to file objections, if any, more so of claims regarding dual membership. The objection received from the Unions are then to be verified by personal interrogation by the Verification Officer, of the members on the basis of the sampling system which is laid down. If the sample check reveals that certain members interrogated deny membership of a union, its list of members will be modified proportionately in the manner laid down. The finding will thereafter be submitted to the Central/State Implementation Machinery.

9. It is thus clear that the Employer and Unions in the industry which accepts the Code of Discipline have to follow the method of verification of membership as laid down therein. Once the procedure is accepted, is it open to any of the parties who agree to abide by the Code of Discipline to seek a procedure different from the procedure agreed. The code of Discipline admittedly does not provide for deciding who has the majority of membership, by holding secret ballot.

10. Some aspects on the report of the National Commission of Labour signed on 20.8.1969 may now be adverted to. The report notes that it attaches considerable importance in the matter of recognition of unions, as Industrial democracy implies that the majority unions should have the right to sole

representation i.e. the right to speak and act for all workers and to enter into agreements with the employer. The report notes that the need for provision for recognition of Unions was also stressed in the second five year plan. Because of the desire to go slow on legislation, recognition was provided for on a voluntary basis in the Code of Discipline. It was felt that it was desirable to make union recognition compulsory under a Central law, in all undertakings employing 100 or more workers, or where the capital invested is above a stipulated amount. The commission noted that serious differences exist, however, on the manner in which the following of a union is to be determined, whether it should be by (a) verification of the fee paying membership of the unions, or (b) election by secret ballot. The evidence led before the commission was that the support of one or the other procedure was evenly balanced. The contentions of the supporters of the verification or secret ballot were then noted. It was however, felt that whatever may be the method, there will have to be an independent authority to decide the representative character of unions, either by verification of membership or by holding elections by secret ballot.

11. There is then the report of the Second National Commission of Labour, 2002 which has also dealt with the matter of recognition of unions. The commission noted that the first National commission had examined the questions of law. We may gainfully reproduce Paragraphs 6.68, 6.69, 6.70, 6.71, 6.72 and 6.73.

6.68. To put the arguments briefly, those who support the secret ballot urge; (1) that the system of secret ballot is what is used to elect a representative to the legislature or Parliament; (2) that it is a system that assures a democratic choice; (3) that the secrecy prescribed in it provides protection to the worker, from harassment by the management or other unions; and (4) that there is no better method to verify support. Those who support the check off system argue:

(i) that the check off or authorization to deduct union subscriptions from wages clearly shows that the respective strength of unions:

(ii) that unlike the secret ballot which only shows the preference at the moment, the check off system shows the continued support for the unions over a long enough period of time;

(iii) that since the negotiating agent has to represent workers over a period of time till the next negotiations fall due, membership of the union is a far better and more reliable index than a secret ballot (which is more like a referendum);

(iv) that the check off system promotes unionisation;

(v) that the check off system does not involve any special expenditure for verification, whereas the administrative cost of a secret ballot, especially when it has to be held in a multi unit undertaking goes to crores of rupees and the development of a formidable number of polling officers;

(vi) that this raises the question of the source from which the money to defray the expenditure on the secret ballot should come, whether it should be from the

management or workers or the Government. The management is reluctant, and some times, unable to find such a large sum of money; the Trade Union does not have the resources, and the Government too is unwilling to find the money from the exchequer;

(vii) that the campaign for a secret ballot disturbs the atmosphere, generates intense feelings of rivalry and acrimony and sometimes violent interludes in establishments which adversely affect and disrupt the tenor and volume of work done etc; and

(viii) that it takes many days for the aftermath of the campaign to settle down.

6.69. The Commission carefully considered the advantages and disadvantages of the relevant options. In dealing with this issue, we had to keep in view our belief that collective negotiations require a strong trade union movement which, in its turn, demands an increasing degree of unionisation. Any formula which militates against increasing unionisation should, therefore, ab initio be avoided. Secret ballot as a method of identifying the negotiating agent raises the following questions:- Should the electorate for choosing the negotiating agent be the entire corpus of workers in the establishment/industry/region or should it be limited only to members of registered trade unions? If it is to be the latter, then in a situation where the total unionised strength is less than 50% of the work force, and this is the average scenario in our country, then a minority will be negotiating for the entire establishment/industry/region; on the other hand, if the entire workforce were to participate, then it is argued this may; weaken the urge or inducement for non-unionised workers to become members of one or other of the trade unions.

6.70. Also, secret ballot even on a restricted basis is logistically and financially a difficult process in industries like railways, banks, post offices, coalmines and other undertakings operating in a number of states. It has been shown that the expenses run into crores of rupees. For instance, we are informed that in the case of the Food Corporation of India (F.C.I.) the identification of the negotiating agent through secret ballot amongst 50,500 employees undertaken during 2002 involved an expenditure of more than 50 lakh rupees, and the deployment of 3,000 returning officers and polling staff.

6.71. A check off system has the advantage of ascertaining the relative strengths of trade unions based on continuing loyalty reflected by the regular payment of union subscription, even if such subscriptions are deducted from the wages as permitted under the Payment of Wages Act, 1936. Also, the check off system by and large, avoids the incidence of dual membership under which, for a variety of reasons, a worker may become member of more than one union. Given the low level of unionisation in India, neither the check off system nor the secret ballot confined to members of registered unions is like to throw up a negotiating agent which commands the support of the majority of workers, excepting in industries and establishments where the degree of unionisation is very high. The argument

advanced against the check off system is that it exposes the loyalty of the worker, and this may make him vulnerable to victimisation by the management or persecution by members of other unions. We feel that this argument does not have much force today, when concretisation and legal rights have more or less done away with the fear that workers had in the early days of trade unionism in the country. Today, it is commonly accepted even by employers that workers have the freedom to join trade unions of their choice. There may be exceptional cases of victimisation and vendetta. But they are exceptions, and not the vogue.

6.72. We have given consideration to all these arguments and come to the conclusion that the check off system should be the general pattern, and wherever there is legitimate apprehension that the system may not achieve the purpose of verification or may create the possibility of victimisation, it should be open to unions to petition the Labour Relations Commission to determine the method that should be adopted in a particular instance.

6.73. It is needless to stress that for the above proposals to be implemented, the check off system in an establishment employing 300 or more workers must be made compulsory for members of all registered trade unions; each of them will have to indicate to the employer the name of the trade union of which he/she is a member and the worker will also have to issue a written authorisation to the employer to deduct his/her subscription from his/her wages and pass it on to his/her trade union.

It is thus clear that for rejecting the check off system of verification of membership as late as 2002, the IInd National Commission for Labour has preferred the check off system to the method of secret ballot.

12. We may now consider the judgment in *Automobile Products of India Employees Union (supra)*. The matter arose from the provisions of the M.R.T.U. & P.U.L.P. Act. The recognition of unions under the M.R.T.U. & P.U.L.P. Act is covered by Sections 10 to Section 18 of the Act. We may note from the provisions of the M.R.T.U. & P.U.L.P. Act that it has granted statutory recognition to the method of verification of membership to determine the majority character of the union. The procedure laid down for verification is based on the membership, six months previous to the date of application. The respondent Union there was the recognised union. The appellant union claiming majority of membership applied for cancellation of recognition of the first respondent union. The application by appellant union was allowed. It was, however, set aside by the High Court. The appellant Union thereafter made a fresh application for recognition as majority union. A suggestion was made for deciding, as to which of the unions had majority, by secret ballot, which was accepted. In the polls that were held, the appellant union secured majority of the votes. The Industrial Court thereafter passed an order granting recognition to the appellant union. The prayer for cancellation of recognition of the Respondent No. 1 was also granted. Two writ Petitions were filed before this Court. Both Petitions were allowed. The contentions raised, that the Industrial Court had violated the statutory provisions

of the Act for grant of recognition of the Union, by adopting the procedure of secret ballot, which was not sanctioned by the Act and therefore, it was illegal and invalid, was upheld. An appeal was preferred before the Supreme Court. The issue before the Supreme Court was, whether the procedure adopted by the Industrial Court for granting recognition to the appellant union was illegal. The Supreme Court noted that though there was a strong demand from some sections for recognizing the bargaining agent of the workmen by a secret ballot or otherwise, the National Labour Commission did not countenance it for certain obvious reasons. It was felt that the elective element would introduce unhealthy trends which would be injurious to the trade union movement, for industrial peace and stability and endanger the interests of the workers, the employers and the society as a whole. After examining the various provisions, the Supreme Court held that what the Industrial Court did by permitting recognition of the union by secret ballot, was by a method clearly derogatory to the Act. The court observed as under:

However, overwhelming therefore, the vote may be in its favour in a ballot, it will not entitle a union to recognition under the Act. The recognition by ballot or by any method other than that laid down in the Act is, therefore, alien to the Act.

Having so said, considering the issue of consent, the court observed that the consent of the parties to follow a procedure which is against the mandatory provisions of the Act, cannot cure the illegality.

13. The issue once again came for consideration before a Division Bench of This court in Association of Engineering Workers v. Dockyard Labour Union 1992 2 C.L.R. 382. The learned Division Bench in view of the Judgment in Automobile Products of India Employees Union (Supra) dismissed the petition. A SLP was preferred to the Supreme Court. The Supreme Court in Association of Engineering Workers v. Dockyard Labour Union and Ors. 1993 1 CLR 637 referring to its earlier judgment observed as under:

In other words, this Court came to the conclusion that secret ballot was a procedure not recognised by law, it was in fact alien to the Act and therefore, that method or mode could not be accepted as valid for the purposes of recognition. We see no reason to depart from the view taken in the aforesaid decision nor are we satisfied that in the instant case the method resorted to by the Industrial Court was one consistent with the provisions of the Statute.

After so holding, this is what the Supreme Court held:

Even if the method of secret ballot is resorted with the consent of parties and care has been taken to see that only those employees who had put in more than six months of service were allowed to cast their preference for the purpose of determining allegiance that was not a proper method for verification of the condition required for recognition u/s 11 and hence, it was a method which was clearly alien to the statute.

14. From the discussion with reference to the judgments it would be clear that the issue was decided, considering the statutory provisions under M.R.T.U. and P.U.L.P. Act.

The issue before the Supreme Court in both the cases, was whether the procedure for recognition was in consonance with the provisions of the M.R.T.U. and P.U.L.P. Act. It is therefore, clear, that what was considered in those judgments were the provisions of the M.R.T.U. & P.U.L.P. Act. What was in issue for consideration before the Supreme Court was whether holding of secret ballot under the provisions of the M.R.T.U. and P.U.L.P. Act was in consonance with the provisions of the Act for deciding who commanded the majority or whether it was contrary to the provisions of the Act. The Supreme Court held that such a procedure was alien to the Act. That is the ratio descend of those judgments.

As pointed out on behalf of the Petitioners by Shri. Deshmukh, what the court must do is to cull out the ratio descend of the judgement. What would be binding under Article 141 of the Constitution would be that ratio descend. Our attention for that purpose was invited to the Judgment in the matter of Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., . The matter in issue was reopening of the original assessment. What was under consideration was the interpretation of Section 147 of the Act and the object of reassessment proceedings. Whilst answering the issue, the Supreme court observed as under:

Such an interpretation would be reading that judgment totally out of context in which the questions arose for decision in that case. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of This court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by This court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of This court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings.

Applying this principle, we are clearly of the opinion that the two judgments of the Supreme Court referred to earlier would apply only for recognition of unions governed by provisions of the M.R.T.U. & P.U.L.P. Act. That ratio cannot be applied to verification of membership of an union in establishments governed by the Code of Discipline and or those not covered by the provisions of the M.R.T.U. & P.U.L.P. Act.

15. We have earlier referred to and reproduced to the extent necessary, the provisions of the Code of Discipline. The Trade Unions Act, 1926 does not provide for the procedure for recognition or verification of membership of an Union or as to who holds majority of membership in the industry or establishment. Similarly

there is absence of provisions in the Industrial Disputes Act, 1947. The only statutory enactment in the State of Maharashtra are contained in the provisions of the M.R.T.U. & P.U.L.P. Act which applies to establishments covered by the provisions of that Act and those industries covered by the provisions of the Bombay Industrial Relations Act.

The Code of Discipline has emerged from a consensus on the part of Industries and Unions to recognise the union holding majority membership. This need was felt to avoid multiplicity of unions and to act as a sole collective bargaining agent so that as far as possible there would be one union speaking on behalf of the workmen in the industry or establishment as the case may be. Nonetheless, in so far as the Code of Discipline is concerned, it still recognises the representative union in the industry as whole and as majority union in the establishment. We may note that in Food Corporation of India (*supra*) the Supreme Court had noted that the "Check off system" which once prevailed in this domain has lost its appeal, and so, efforts are on to find out which other system can foot the bill. As we have earlier noted the report of the Second Labour Commission which came out in the year 2002, has reiterated the advantages of check off system as set out in Para 6.72 of that report. That the majority union should collectively bargain on behalf of the workmen is to avoid conflicting demands of minority unions; some times totally irrelevant, which could result in hampering the industrial harmony and pivotal for functioning of an industry. Determining the majority character of an union is an important step in identifying the union, who will represent the workmen in the collective bargaining process. A procedure adopted at the Indian Labour conference, representing the collective will of employers and unions and borne out of their experience at the ground level, should not normally be interfered with by courts, not specialised in the intricacies of collective bargaining.

16. The question consider the above discussion, really is, whether the expression "verification of membership" can bring within its fold the procedure of election like secret ballot. Verification of Membership in terms of the Code of Discipline requires that the membership of the Union is considered based on membership for a particular period. The object is to ascertain whether the worker maintains his loyalty to the union. The procedure of election on the other hand would require firstly preparation of a voter's list based on the membership of all the unions in the industry/establishment. The election will only decide who holds the majority of membership on the date the elections are held. An elector who is a member of an Union for the relevant period for whatever reason, could still vote for another union either on account of change of his personal views or other considerations. Secret ballot will only decide as to which union, the workers repose their faith on the date of the election. Secret ballot will not decide the issue as to membership of the union for the relevant period. The method of secret ballot in the context of the procedure provided by the Code of Discipline as a method of determination of the majority of membership of the Union for a particular period would thus be derogatory to the Code of Discipline. Once there

be a procedure and by consent, the parties agree to follow that procedure, it is not open to those parties and the authorities to depart from the procedure which has been voluntarily accepted by all the parties. The authorities cannot and impose another method of deciding who enjoys majority support. Once the parties accept the code of discipline, the procedure for determining the majority of membership in the industry in the area or the establishment, is the procedure laid down therein alone, and must be followed. Any departure would result in striking down the action. Those who consent to a particular procedural process, must abide by that procedural process and cannot deviate from the same, and if they do must suffer the consequences of their action being struck down.

Our attention was invited by the contesting respondents to the Judgment in General Secretary, Rourkela Sramik Sangh Vs. Rourkela Mazdoor Sabha and others, . The High court in the case of Rourkela Mazdoor Sabha was considering the issue as to who could initiate the process of verification of membership. The learned Bench held that the election had not been held in accordance with the Code. It held that the entire process initiated by the Implementation and Evaluation Officer was without the authority of law. In appeal before the Supreme Court, reported in General Secretary, Rourkela Sramik Sangh (supra), the Supreme Court held that the procedure had been correctly followed and accordingly set aside the order of the Division Bench of Orissa High Court and issued directions to complete the process of verification of Membership and recognition.

The Supreme Court in Automobile Products of India Employees Union (supra) has noted that the Code of Discipline has been ratified by all Central Employers and Workers Organisations at the 16th Session of the Indian Labour Conference held in May, 1958 and the Code came into force from June, 1958. The second aspect of the matter is that the Code of Discipline is enforceable. Our attention was also invited to the judgment in the case of International Airports Authority of India Workers" Union Vs. International Airports Authority of India and Others, . A perusal of the judgment would indicate that the direction was issued for holding elections for determination of majority character of the union for being recognised. The unions there had arrived at an agreement that they were willing to participate in the election to be held in accordance with memorandum issued by the Government of India, Ministry of Labour on December, 18, 1980 by secret ballot to be conducted by the C.I.R.M. It was further agreed that the election shall be held within one month from the date of agreement, i.e. on or before April 23, 1991. The judgment has therefore, proceeded on the agreement arrived at between the unions. The Judgement in International Airport (supra) therefore, again does not lay down any law nor is an authority for the proposition that if parties agree to abide by the Code of Discipline, secret ballot is one of the method which can be adopted for verification of membership.

17. On a consideration of the provisions and the judgements, what follows is that secret ballot would only indicate preference of an individual employee on the

date the secret ballot is held for a particular union, even if he be not its member. It cannot be a method for verification of membership of the union in terms of the Code of Discipline for the particular period of verification of membership. The method of secret ballot for ascertaining majority of membership is therefore, derogatory to the code of Discipline.

18. The last question to be answered is, whether the Method of secret ballot to ascertain the majority of Membership on the facts of this case be arbitrary. This question in the context of other questions referred to us and considering our answer to those questions, may really be academic. However, we see no reason as to why the reference court should answer the said issue as it is to be answered on the facts of the case and as per rules of This court by a Division Bench. We may gainfully refer to the judgment of the Supreme Court in the case of State Bank of India and Ors. v. Their Workman, which raised a similar issue as to whether the issue requires to be answered. The Supreme court therein observed as under:

It is therefore, not necessary for us to decide hypothetical questions which may arise in any future reference that may be made under the amended section. In the exercise of its appellate powers, this Court does not give speculative opinions on hypothetical questions. It would be contrary to principle, inconvenient and inexpedient that opinion should be given on such questions. If and when they arise, they must arise in concrete cases and to use the words of the Ear of Halsbury, L.C. in Attorney General of Ontario v. Hamiltan Street Railway LO.R. 1903 A.C. 524:

It would be extremely unwise for any judicial tribunal to attempt beforehand to exhaust all possible cases and facts which might occur to qualify, cut down, and override the operation of the particular words when the concrete case is not before it.

It is true that those observations are in the context of deciding the Petition on merits. We are of the opinion that considering the questions which have been referred to us this question is not required to be answered by us and is left for discussion by the Appropriate Bench deciding the Petition.

19. In the light of that, we may answer the reference as under:

(1) The ratio of the judgment of the Supreme Court in Automobile Products of India Employees Union (supra) and Association of Engineering Workers (supra) and the judgment of Division bench in Associated Engineering (supra) applies to verification of membership of the unions and establishments, covered under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act.

(2) The method of secret ballot to ascertain majority of membership is derogatory to the Code of Discipline.

(3) The judgement of the Division Bench of This court in O.N.G.C. (supra) was

not correctly decided and is consequently overruled.

(4) Considering the question involves a finding of fact, we are not called upon to answer the issue whether the method of secret ballot to ascertain the majority of membership would in the facts of this case be arbitrary. We leave that question for decision by the appropriate Bench hearing the Petitions, in the light of our answer to the questions raised before us.

Reference answered accordingly. The Registry to place the Petition before the appropriate Bench.