

(1999) 04 DEL CK 0036

In the Delhi High Court

Case No : Civil Writ Petition No. 2480 of 1994

Badarpur Power Engineers and Workmen Union

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 3 AD 640

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Mr. Mukul Rohtagi, Ms. Richa Kapoor and Mr. Mahesh Srivastava, for the Appellant; Mr. N.C. Sikri and Mr. Piyush Sharma, for the Respondent

Judgement

Mukul Mudgal, J.—This writ petition has been filed by one of the Unions in the above Power Project which is owned by the Government of India and maintained by the National Thermal Power Corporation Ltd. Though this petition arose from a refusal of Govt. of India, Ministry of Labour Respondent No.1, to refer an industrial dispute for adjudication, inter alias for the reason that demand for holding a secret ballot cannot form the basis of an industrial dispute, the real issue now arising in this petition is the method and manner of determination of majority character of trade unions in an establishment.

2. On the issue arising in the writ petition there is now a judgment of the Hon"ble Supreme Court in Food Corporation of India Staff Union Vs. Food Corporation of India and others, wherein it has been held as follows:

"Collective bargaining is the principal raison d'etre of the trade unions. However, to see that the trade union, which takes up the matter concerning service conditions of the workmen truly represents the workmen employed in the establishment, the trade union is first required to get itself registered under the provisions of Trade Unions Act, 1926. This gives a stamp of due formation of the trade union and assures the mind of the employer that the trade union is an authenticated body; the names and occupation of whose office bearers also

become known. But when in an establishment, be it an industry or an undertaking, there are more than one registered trade unions, the question as to with whom the employer should negotiate or enter into bargaining assumes importance, because if the trade union claiming this right be one which has as its members minority of the workmen/employees, the settlement, even if any arrived between the employers and such a union, may not be acceptable to the majority and may not result in industrial peace. In such a situation with whom the employer should bargain, or to put it differently who could be the sole bargaining agent, has been a matter of discussion and some dispute. The 'check off system' which one prevailed in this domain has lost its appeals; and so, efforts are on to find out which other system can foot the bill. The method of secret ballot is being gradually accepted. All concerned would, however, like to see that this method is so adapted and adjusted that it reflects the correct position as regards membership of the different trade unions operating in one and the same industry, establishment or undertaking."

The said judgment also refers to instruction No. 25 of 1980 dated 18th December, 1980 issued by the office of the Chief Labour Commissioner, Ministry of Labour, Government of India. The Hon'ble Supreme Court in light of the aforesaid instruction has held as follows:-

"This communication styled as "Memorandum" has stated that on receipt of request either from the management or union for recognition of the union for the purpose at hand, its eligibility for recognition is first required to be examined, as stated in paragraph 3 in which mention has been made about collection of some preliminary data. After this has been done, the exercises of determination of the strength of all eligible union is undertaken .

This is decided though secret ballot. The Memorandum has laid down a detailed procedure in this regard. We have also on record a scheme which has been prepared by the appellant for assessment of representative character of the trade unions through secret ballot system. This scheme is annexed to is No.1 of 1994.

We have perused the aforesaid documents. We direct that the following norms and procedure shall be followed for assessing the representative character of trade unions by the "secret ballot system":

- (i) As agreed to by the parties the relative strength of all the eligible unions by way of secret ballot be determined under the overall supervision of the Chief Labour Commissioner (Central) (CLC).
- (ii) The CLC will notify the Returning Officer who will conduct the election with the assistance of the FCI. The Returning Officer shall be an officer of the Government of India, Ministry of Labour.
- (iii) The CLC shall fix the month of election while the actual date/dates of election shall be fixed by the Returning Officer.
- (iv) The Returning Officer shall require the FCI to furnish sufficient number of

copies of the lists of all employees/workers (category III and IV) governed by FCI (Staff) Regulations, 1971 borne on the rolls of FCI as on the date indicated by the CLC. The list shall be prepared in the proforma prescribed by the CLC. The said list shall constitute the voters list.

(v) The FCI shall display the voters list on the notice boards and other conspicuous places and shall also supply copies thereof to each of the unions for raising objections, if any. The unions will file the objections to the Returning Officer within the stipulated period and the decision of the Returning Officer shall be final.

(vi) The FCI shall make necessary arrangement to :

(a) give wide publicity to the date/dates of election by informing the unions and by affixing notices on the notice board and also at other conspicuous places for the information of all the workers;

(b) print requisite number of ballot papers in the proforma prescribed by the CLC incorporating therein the names of all the participating unions in an alphabetical order after ascertaining different symbols of respective unions;

(c) the ballot papers would be prepared in the proforma prescribed by the CLC in Hindi/English and the concerned regional language;

(d) set up requisite number of polling stations and booths near the premises where the workers normally work; and

(e) provide ballot boxes with requisite stationery, boards, sealing wax etc.

(vii) The Returning Officer shall nominate Presiding Officer for each of the polling station/booth with requisite number of polling assistants to conduct the election in an impartial manner. The Presiding Officers and the polling assistants may be selected by the Returning Officer from amongst the officers of the FCI.

(viii) The election schedule indicating the dates for filing of nominations, scrutiny of nomination papers, withdrawal of nominations, polling, counting of votes and the declaration of results, shall be prepared and notified by the Returning Officer in consultation with the FCI. The election schedule shall be notified by the Returning Officer well in advance and at least one month's time shall be allowed to the contesting unions for canvassing before the date of filing the nominations.

(ix) To be eligible for participating in the election, the unions must have valid registration under the Trade Unions Act, 1926 for one year with an existing valid registration on the first day of filing of nomination.

(x) The Presiding Officer shall allow only one representative to be present at each polling station/booth as observer.

(xi) At the time of polling, the polling assistant will first score out the name of the employee/workman who comes for voting, from the master copy of the voters' list and advise him thereafter to procure the secret ballot paper from the

Presiding Officer.

(xii) The Presiding Officer will hand over the ballot paper to the workman/employee concerned after affixing his signatures thereon. The signatures of the workman/employee casting the vote shall also be obtained on the counterfoil of the ballot paper. He will ensure that the ballot paper is put inside the box in his presence after the voter is allowed to mark on the symbol of the candidate with the inked rubber stamp in camera. No employee/workman shall be allowed to cast his vote unless he produces his valid identity card before the Presiding Officer concerned. In the event of non-production of identity card due to any reason, the voter may bring in an authorisation letter from his controlling officer certifying that the voter is the bona fide employee of the FCI.

(xiii) After the close of the polling, the Presiding Officer shall furnish detailed ballot paper account in the proforma prescribed by the CLC indicating total ballot papers received, ballot papers used, unused ballot papers available etc. to the Returning Officer.

(xiv) After the close of the polling, the ballot boxes will be opened and counted by the Returning Officer or his representative in the presence of the representative of each of the unions. All votes which marked more than once, spoiled, cancelled or damaged etc. will not be taken into account as valid votes but a separate account will be kept thereof.

(xv) The contesting unions through their representatives present at the counting place may be allowed to file applications for recounting of votes to the Returning Officer. The request would be considered by the Returning Officer and in a given case if he is satisfied that there is reason to do so he may permit recounting. However, no application for recounting shall be entertained after the results of the votes are declared.

(xvi) The result of voting shall be compiled on the basis of valid votes polled in favor of each union in the proforma prescribed by the CLC and signatures obtained thereon from the representatives of all the unions concerned as a proof of counting having been done in their presence.

(xvii) After declaring the results on the basis of the votes polled in favor of each union by the Returning Officer, he will send a report of his findings to the CLC.

(xviii) The union/unions obtaining the highest number of votes in the process of election shall be given recognition by the FCI for a period of five years from the date of the conferment of the recognition.

(xix) It would be open to the contesting unions to object to the result of the election or any illegality or material irregularity which might have been committed during the election. Before the Returning Officer such objection can only be raised after the election is over. The objection shall be heard by the CLC and disposed of within 30 days of the filing of the same. The decision of the CLC shall be final subject to challenge before a competent court, if permitted under

law.

It would be open to the CLC to deal with any situation not covered by the procedure detailed above. He may do so in consultation with the Returning Officer and the FCI".

3. Learned senior counsel appearing on behalf of the petitioner union submits that there are several trade unions in the establishment and one of the said trade union is the petitioner union. It is the plea of the petitioner union that more than 85 per cent of the workmen are represented by the petitioner and he quotes the number as about 2000 out of 2,200 which were its members at the relevant time. He further submits that for more than last 20 years there has been no determination of the majority union in the Establishment. He further submits that even in the interest of industrial peace and relations between the management and the workmen the identity of the majority union should be ascertained expeditiously so that there can be better, quicker, more constructive and effective bargaining between the workmen and the management. He relied upon the judgment of the Hon"ble Supreme Court in Food Corporation's case (*supra*) to contend that in view of the long passage of time and the fact that the Supreme Court judgment fully covers not only the procedure for determination of the majority union but also emphasises the rationale behind the determination of majority character of a union, it is in the interest of justice that orders similar to that passed in the Food Corporation of India case by the Supreme Court be passed. It is further submitted by the learned counsel for the petitioner that on several occasions the management had agreed to the request to fix the date of elections to determine the question as to which of the unions is the majority union but that issue has been deferred from time to time and has the potential of vitiating the industrial peace and good relations between the employer and employee.

The learned counsel for the petitioner also relied upon a settlement dated 31.8.78 and, in particular, clause 4 of Chapter VII under the heading "FRAME WORK OF UNION MANAGEMENT RELATIONSHIP" which read as under:-

"NTPC and the Union agree that the management will hold shortly a secret ballot to determine the majority union which will be recognised as the representative union to act as the sole bargaining agent on behalf of the workmen. All workmen other than executives and excluding the supervisors and categories equivalent thereto shall be entitled to participate in the secret ballot. Only the unions of Badarpur Division for a period of not less than 12 months up to the date of secret ballot shall be entitled to participate in the election for determination of recognised representative union. The Union that secures the majority of votes shall be recognised by the management as the representative Union for a period of 2 years from the date of declaration of the result of the secret ballot. Subject to the above broad principles, management shall work out the detailed procedures for the conduct of the elections by secret ballot which shall be held under the supervision of an official nominated by the Labour Commissioner of

Delhi Administration."

It is further submitted that even after the said settlement and its binding nature no elections were held. Thereafter pursuant to the demand notice dated 19.12.92 and before the conciliation officer the on 2.9.93, during the course of conciliation proceedings a settlement was arrived at wherein the management stated that it had no objection for a secret ballot and agreed to complete the process of election within a period of six months from the date of settlement. It was further pleaded by the petitioner that on several dates thereafter during 1993-94 the management of respondent No.3 fully relied upon the settlement dated 31.8.78. On 4.11.97 vide letter respondent No.3 submitted that the settlement dated 31.8.78 is irrevocable.

4. On 25th January, 1999 notices were issued to all other unions in the Establishment. The other four unions in the Badarpur Thermal Power Station i.e. BTPP Employees Union (BMS); Badarpur Vidyut Karamchari Union (DMC); Badarpur Power Worker's Union (CITU) and NTPC Workers Union (INTUC) have entered appearance and three of them have filed affidavits stating that they do not oppose holding elections by secret ballots for determining the majority union. It is submitted that this is a long standing demand of all the said unions. Mr. Sharath Kapoor appearing on behalf of the respondent No.6-NTPC Workers Union also does not oppose in principle the method of holding of elections by secret ballot method to determine the majority character of a union. However, he had a different view as to whether or not such an election should be held. The imp leded unions who agree for this elections have, however, asserted that time frame and the procedure for holding elections by secret ballot should be laid down by this Court. In view of the aforesaid statement it is clear that all the unions bar one have agreed with the necessity for determination of the majority character of the unions in the National Thermal Power Corporation by a secret ballot method. Mr. N.C. Sikri, the learned Senior Counsel appearing on behalf of the Badarpur Thermal Power Stations - respondent No.3 states that in case this court agrees to the suggestion of the learned counsel for the petitioner and orders election in accordance with the judgment laid down by hon"ble the Supreme Court in Food Corporation of India then respondent No.3 should be kept out of the proceedings. He has raised several other pleas which in my opinion are not necessary to be gone into in view of the fact that all the unions bar one have agreed that election should be held by the secret ballot method of determining the majority union. The determination of the majority character of the Union is also in the interest of the management and obviously this reason had led to the management agreeing to hold the elections on earlier occasions and even by a settlement dated 31.8.78.

5. In the light of the above I am of the view that since this petition affects a critical establishment supplying power to the National Capital Territory of Delhi and for the last 20 years there has been no determination of the status of the major union leading to proliferation of trade unions, it would be not only in the

interest of justice but also in the public interest as well as industrial peace and harmony, that the character of majority union be ascertained as per the (procedure) laid down by the Hon''ble Supreme Court since almost 20 years have passed without such determination. It is of utmost importance that this be done expeditiously because any industrial unrest would affect the power supply and a prolonged industrial dispute adjudication may have the potential of vitiating industrial peace and harmony. No useful purpose would be served by reference of a dispute for adjudication after more than 20 years particularly when the issue being referred is fully covered by the Judgment of the Hon''ble Supreme Court. In fact the Hon''ble Supreme Court in Bombay Telephone Canteen Employees'' Association, Prabhadevi Telephone Exchange Vs. Union of India and another, has held that insofar as the employees of Corporations are concerned a remedy either under Article 226 of the Constitution of India or a reference u/s 10 of the Industrial Disputes Act is available. The respondent No.3 is under the administrative control of the National Thermal Power Corporation, which is a Corporation envisaged by the above judgment. It is evident that this ought to be done expeditiously in the interest of industrial peace. It may not be put of place to mention that both respondents 1 to 3 are amenable to the writ jurisdiction of this Court as respondent No.1 is the Union of India, Respondent No. 2 is the Chief Labour Commissioner and respondent No.3 is Badarpur Thermal Power Corporation Ltd. Thus this is a fit case where in accordance with the decision of the Supreme Court in FCI''s case direction should be issued for early election by secret ballot to determine the majority union. Clause 4 of Chapter VII (Framework of Union Management Relationship) of Memorandum of Agreement dated 31st, August 1978 stipulates a term of two years for the majority Union. Thus in accordance with the judgment of the Hon''ble Supreme Court. I direct as under.

(i) The relative strength of all the eligible unions by way of secret ballot be determined under the overall supervision of the Chief Labour Commissioner (Central) (CLC).

(ii) The CLC will notify the Returning Officer who will conduct the election with the assistance of the Badarpur Thermal Power Station. The Returning Officer shall be an officer of the Government of India, Ministry of Labour.

(iii) The CLC shall fix the month of election while the actual date/dates of election shall be fixed by the Returning Officer.

(iv) The Returning Officer shall require the Badarpur Thermal Power Station to furnish sufficient number of copies of the lists of all concerned employees The said list shall constitute the voters list.

(v) The Badarpur Thermal Power Station shall display the voters list on the notice boards and other conspicuous places and shall also supply copies thereof to each of the unions for raising objections, if any. The unions will file the objections to the Returning Officer within the stipulated period and the decision of the

Returning Officer shall be final.

(vi) The Badarpur Thermal Power Station shall make necessary arrangement to:

(a) give wide publicity to the date/dates of election by informing the unions and by affixing notices on the notice board and also at other conspicuous places for the information of all the workers;

(b) print requisite number of ballot papers in the proforma prescribed by the CLC incorporating therein the names of all the participating unions in an alphabetical order after ascertaining different symbols of respective unions;

(c) the ballot papers would be prepared in the proforma prescribed by the CLC in Hindi/English.

(d) set up requisite number of polling stations and booths near the premises where the workers normally work; and

(e) provide ballot boxes with requisite stationery, boards, sealing wax etc.

(vii) The Returning Officer shall nominate Presiding Officer for each of the polling station/booth with requisite number of polling assistants to conduct the election in an impartial manner. The Presiding Officers and the polling assistants may be selected by the Returning Officer from amongst the officers of the Badarpur Thermal Power Station.

(viii) The election schedule indicating the dates for filing of nominations, scrutiny of nominations papers, withdrawal of nominations, polling, counting of votes and the declaration of results, shall be prepared and notified by the Returning Officer in consultation with the Badarpur Thermal Power Station. The election schedule shall be notified by the Returning Officer Well in advance and at least one month's time shall be allowed to the contesting unions for canvassing before the date of filing the nominations.

(ix) To be eligible for participating in the election, the unions must have valid registration under the Trade Unions Act, 1926 for one year with an existing valid registration on the first day of filing of nomination.

(x) The Presiding Officer shall allow only one representative to be present at each polling station/booth as observer.

(xi) At the time of polling, the polling assistant will first score out the name of the employee/workman who comes for voting, from the master copy of the voters' list and advise him thereafter to procure the secret ballot paper from the Presiding Officer.

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the inked rubber stamp in camera. No employee/workman shall be allowed to cast his vote unless he produces his valid identity card before the Presiding Officer concerned. In the event of non-production of identity card due to any reason, the voter may bring in an authorisation letter from his controlling officer certifying that the voter is the bonafide employee of the Badarpur Thermal Power Station.

(xiii) After the close of the polling, the Presiding Officer shall furnish detailed ballot paper account in the proforma prescribed by the CLC indicating total ballot papers received, ballot papers used, unused ballot papers available etc. to the Returning Officer.

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(xv) The contesting unions through their representatives present at the counting place may be allowed to file applications for recounting of votes to the Returning Officer. The request would be considered by the Returning Officer and in a given case if he is satisfied that there is reason to do so he may permit recounting. However, no application for recounting shall be entertained after the results of the votes are declared.

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(xvii) After declaring the results on the basis of the votes polled in favor of each union by the Returning Officer, he will send a report of his finding to the CLC.

(xviii) The union/unions obtaining the highest number of votes in the process of election shall be given recognition by the Badarpur Thermal Power Station for a period of two years from the date of conferment of the recognition.

(xix) It would be open to the contesting unions to object to the result of the election or any illegality or material irregularity which might have been committed during the election. Before the Returning Officer such objection can only be raised after the election is over. The objection shall be heard by the CLC and disposed of within 30 days of the filing of the same. The decision of the CLC shall be final subject to challenge before a competent court, if permitted under law.

It would be open to the CLC to deal with any situation not covered by the procedure detailed above. He may do so in consultation with the Returning Officer and the Badarpur Thermal Power Station.

The writ petition is disposed of accordingly.

6. No order as to costs.