

(2017) 05 CAL CK 0021
In the Calcutta High Court
Case No : 25389 (W) of 2012

CLW Labour Union and Another

APPELLANT

Vs

Union of India & Others.

RESPONDENT

Date of Decision : 15-05-2017

Acts Referred:

Constitution of India, Article 14, Article 19(1)(c) - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Protection of ce

Citation : (2017) 05 CAL CK 0021

Hon'ble Judges : Sambuddha Chakrabarti

Bench : SINGLE BENCH

Advocate : Soumya Majumder, Victor Chatterjee, Swapan Banerjee, Arunava Ganguly

Judgement

"Anglo-American tradition has generally been sceptical of, or downright hostile to, workers" participation in management. Despite the very considerable legal and social differences that exist between the various common-law countries with respect to the status of organized labour, they are all strongly imbued with the tradition of organized labour facing the employers as the opposite party in collective bargaining. This means that the functions of management representing the shareholders - and of the unions - representing organized labour - are kept separate". W. Friedmann - Law in a Changing Society (2nd Edn., 4th Indian reprint, 2008) p. 344

1. By this writ petition, the petitioners have, inter alia, prayed for a writ in the nature of mandamus commanding the respondents to grant recognition to the petitioner no. 1 for operating as a recognized Trade Union at Chittaranjan Locomotive Works and to allow them to participate in bargaining and/or joint negotiation with the management.

2. The petitioner no. 1 i.e., CLW Labour Union (the Union, for short) is a

registered Trade Union and has been functioning as a bargaining agent throughout the India; but it is not allowed to participate in bargaining with the management at Chittaranjan Locomotive Works (CLW, for short), i.e., the respondent no. 3. According to them, the Union represents 62 per cent of the employees at CLW.

3. The grievance of the petitioner is that even though the Union has been making representations for long it has not been recognized by the management of the respondent no. 3, curtailing the Union's statutory right of bargaining with the management regarding the terms and conditions of service of its members. It has various other demands for which several representations have been made from time to time. According to them, the respondent no. 3 and the production units of the Indian Railways have been left out of consideration for electing the recognized Trade Unions although Unions at other units of the Indian Railways are allowed to participate in negotiation after being recognized through the process of election.

4. A Staff Council has been constituted by the Railway Board with seventeen members of the Union to represent the cause of the worker but their function is singularly advisory and it has no power to negotiate with the management regarding the terms and conditions of service or employment or non-employment of the employees working in the respondent no. 3.

5. The management of the respondent no. 3 had already written to the Ministry of Railways for recognizing the Trade Union through secret ballot in the place of the Staff Council. The Staff Council itself has also written to the Railway Board to give opportunity to the employees to go through the election process for recognition of Union by secret ballot. But the respondents have not taken any steps towards that which has necessitated the petitioners to approach the court.

6. The writ petition has been contested by the respondents by filing an affidavit-in-opposition wherein it has been contended that as per the policy of Ministry of Railways instead of a recognized trade union, the Staff Council is functioning in all the production units of the Railways in terms of the relevant provisions of the Indian Railway Establishment Manual (IREM, for short), this was introduced in the year 1954. In the year 1967, the Government decided that a Joint Consultative Machinery (JCM, for short) should be set up in all Government ministries and departments. The Ministry of Railways agreed to abolish the Staff Councils in zonal railways. But it was of the view that it should be operating in the production units. It was also of the view that the Unions should not be recognized in the production units as the JCM was union based. There was an apprehension of unions interfering with the production target and the Staff Council should provide necessary machinery for redressal of grievance of the staff. This proposal was put up before the Cabinet in the year 1967 was approved. The matter was subsequently reviewed twice and on both the occasions it was decided to continue with the existing system of the Staff Council in the production unit. It has been the further contention of the respondents that

the Staff Councils represent the grievances of the workers through regular meetings with the local management at the unit level. The respondents have reiterated that as per the policy decision of the Government of India trade unions have been recognized only in zonal railways and attached offices etc.

7. It has been further contended that the respondent no. 3 Staff Council functions in a very cordial atmosphere and the grievances of the staff are settled amicably. The recognition of trade union cannot be asked by the petitioners as of right. It is the prerogative of the employer whether to recognize a trade union or not. The respondents prayed for dismissal of the writ petition.

8. Thus, it appears that while the case of the respondents is based on a policy decision, the petitioners seek enforcement of their right to form union to be recognized as a Trade Union which may enable them to participate in bargaining and joint negotiation with the management. A very pertinent issue has been raised by the petitioner that if in all other establishments of the railway negotiation and bargaining is permissible through the trade union, why must not the same be allowed by the management at the production unit?

9. It is an admitted position that a Staff Council has been created by the management. The relevant portion of the Establishment Manual annexed to the affidavit-in-opposition indicates that these Councils consist of elected members, nominated members and President nominated by General Manager or Chief Administrative Officer as also the ad hoc co-opted members. The elected members are drawn from a wide range of various categories and the nominated members are nominated by the General Manager or the Chief Administrative Officer. The President is nominated by the General Manager or Chief Administrative Officer. There is a provision of election of the Staff Council, which is held once in two or three year and by ballot.

10. Again, the powers and functions of the permanent negotiating machinery have also been mentioned in the Railway Establishment Manual. Such a machinery works at three tiers, viz., the Railway level, the Railway Board Level and the Tribunal Level. Paragraph 2616 (iii) of the IREM says that all disciplinary matters and subjects like promotion, transfer etc., of individual members of the staff which do not involve any general principle have been excluded from the scope of discussion at all the three levels except at the discretion of the officer concerned. Various sub paragraphs of paragraph 2616 says that questions concerning pay scales, allowances etc., will only be discussed between the Federation and the Railway Board and not at the lower level. At the centre negotiation will be between the Railway Board and the Federation for which there will be quarterly meeting between the Railway Board and the Federation. In case, after discussion between the Railway Board and the Federation an agreement is not reached on any matter of importance, the same may be referred to the ad hoc Railway Tribunal. It would be open to the Government to accept, reject or modify the decision of the Tribunal.

11. A bare perusal of the relevant provisions as mentioned above clearly brings out that the Staff Council is not a substitute for a recognized trade union. It is a body which is constituted at the instance of the management and the nature of work is also very different. I quite agree with the submission of the petitioners that it is more a creature of the management's desire, then a representative union of the workers.

12. One more aspect cannot be glossed over. In the perception of the respondent no. 3 itself, there has been a change over the past few years. While the Railway was not willing to allow any negotiation initially since 2012 the management of the respondent no. 3 itself has been expressing the importance of having a recognized trade union through the process of election. The respondents in the affidavit-in-opposition have not very seriously disputed the statement made in Paragraph 10 of the writ petition. It does not sound to reason to reiterate that there is no system of recognition of a trade union in the production units and only the Staff Councils are allowed to represent the cause of the workers.

13. When the respondent no. 3 had made a specific representation to the Secretary (Establishment) of the Railway Board on June, 2012, inter alia to that effect that by not recognizing the unions various problems have been created, the Staff Council members felt that instead of having recognized unions without any power of negotiation, the administration should have one or two strong recognized unions or associations with whom negotiation could take place and demands might be settled. Negotiation with the recognized unions will instill confidence amongst workers that whenever any decision had been taken it would be implemented. There is a very significant statement in the representation that every staff council member has his own agenda to discuss separately with different officers. The respondent no. 3 urged it for a review of the existing policy of recognition of unions in the production units. In the zonal railways recognized unions were functioning at the workshops which have the same staff strength as the production units. Therefore, the demand of the recognized union at respondent no. 3 could be considered keeping these facts in view.

14. It may be mentioned that a similar question cropped up for consideration in appeal between the Union of India Vs. Railway Couch Factory Men's Union (LPA 550 of 2010) in the High Court in Delhi. In that case of the respondent was a Trade Union of workers of Railway Couch Factory (RCF) at Kapurthala. There also for the registered trade union the point of grievance was that though in respect of the zonal railways the respondents has a policy for recognition of unions based on secret ballot, the same system is not available in the production units. By a detailed judgment, the Division Bench of the Delhi High Court had considered the arguments and counter arguments advanced by both the sides and after considering the formation and functions of the Staff Council, the Division Bench held that the workers of the railway production units are deprived of their representation in JCM by the mechanism of a Staff Council. It is not wise to keep them away from the consultative machinery while deciding their fate and

representation to them will be conducive to a healthy atmosphere and in public interest. The contention of the appellant in that case also that there was no necessity for recognition of the respondent union as there is a scheme of a Staff Council which can redress the grievances of the employees, was refuted by holding that the formation and functions of the Staff Council would demonstrate that it is not so. The impugned action of the respondent was held to be discriminatory and the appeal was dismissed. The matter went to the Supreme Court, but the Supreme Court declined to interfere with the impugned order. It may further be mentioned that the order has already been implemented in Kapurthala unit.

15. Over and above the questions raised in the present writ petition there is another fact which has to be taken into consideration, viz., when the Railway Establishment Manual makes no distinction between the unions in the production units and other establishments, the workers of the production units cannot be discriminated against. In the absence of any such restriction in the Manual itself which has been so strenuously relied on by the respondents, the petitioner union cannot be refused participation in the secret ballot for the purpose of recognition.

16. Mr. Majumdar has also raised a very fundamental issue: Whether the management can curtail the rights of the functioning of a trade union in a manner which renders its very existence virtually ineffective? Can the recognition of a trade union and the right of negotiation for meaningful espousal of the cause of members of the trade union depend on the mercy of management? The approach of the respondents has been very strongly criticized by the petitioner as an effort to secure capitalist monopoly or to secure the highest rate of profit. The railways have demanded maximum profit and such aim is sought to be achieved by distributing less capital to the labour. Thus, there is always a propensity to close the avenue of negotiation of through a recognized trade union so that the grievance can never be ventilated.

17. The law is very well-settled that the right to form an association comes within Article 19(1)(c) of the Constitution of India. A State cannot circumvent the article by placing restrictions on the objects or purposes of associations. Trade Unions grew up out of the compulsions of situations where an individual employee is not in a position to bargain with the employer. His position as an employee is quite unenviable vis-a-vis his employer with far greater and incomparably superior financial and organizational strength. Quite frequently he falls a prey to the arbitrary policies of his employer. An individual is hardly expected or is even in a position to effectively protect himself against any unfair policy of the employer. Herein lies the importance of a trade union where a labourer can strike collective bargain and does not feel helpless as an individual. Such a protective right cannot be nullified or taken away in the name of a policy decision. It is true that Courts are very slow in interfering with a policy matter. But such immunity is enjoyable so long as such a policy decision is neither arbitrary nor discriminatory nor it does take away or infringe any fundamental

right of a citizen.

18. The present petitioners are agitating over an issue where the so-called policy decision of the respondents satisfies all the criteria for a judicial intervention. Formation of a trade union has been recognized by a central Act and it cannot be taken away on the basis of a mere apprehended interference with production, as has been sought to be made out by the respondents. Acceptance of such a contention will amount to paying too a high premium to any threat perception in vacuum and providing a handle to the management of any factory to stultify any trade union activity.

19. The Trade Unions Act, 1926 is a law which imposes reasonable restrictions on the exercise of the right conferred by Article 19(1)(c) of the Constitution of India. Formation of a trade union has a specific purpose and object to achieve. Disallowing this object to be fulfilled is bound to render the right to form union nugatory as well as going against the fundamental right guaranteed by the Constitution of India. Taking away or curtailing the right to bargain by the trade union or denial of negotiation has never been the object of the legislature. Relying on the case relating to Kapurthala unit, Mr. Majumdar submitted that there cannot be any justifiable reason for the respondents to deny recognition and right of bargaining through a trade union of the respondent no. 3. Mr. Majumdar is very right in his submission that the Railway Establishment Manual is at most a guideline or a compilation of executive instructions which have no statutory force. It cannot be employed as a device to frustrate a right recognized by the Constitution of India to form a union and seek recognition nor can it go against the fundamental right guaranteed by the Constitution of India.

20. The contention of the respondents that the writ petition is premature as the recommendation by the respondent no. 3 to the Railway Board awaits consideration, cannot be accepted primarily on the ground that the petitioners have approached the court to enforce their right after a long silence and inaction on the part of the respondents and, therefore, it would be a travesty of justice to throw it out as a premature one. The stands of the respondents have been made quite obvious from the objections taken by them to the reliefs sought in the writ petition. Moreover, the petitioners have successfully agitated and respondents have not been able to provide any satisfactory answer to the obvious discrimination against the workmen of the production units vis-a-vis the Zonal Units and, therefore, the action of the respondents must be held to be violative of Article 14 of the Constitution of India. As has been pointed out by the learned Single Judge of the Delhi High Court that the power of the respondents to deny a union to the petitioners or the right to participate in the secret ballot as a preliminary step towards recognition must be traced to some constitutionally valid provision in the establishment manual itself which the respondents could not satisfy.

21. In such view of it, I find sufficient merit in the writ petition and justification for approaching the Court for the reliefs sought in the petition. The writ petition

is allowed. Mandamus is issued directing the respondents to allow the petitioners to participate in the secret ballot and to take steps pursuant to the result thereof for recognition as a trade union, within four weeks from the date of the communication of the order.

22. There shall be no order as to the costs.

23. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.