

(1964) 12 CAL CK 0009
In the Calcutta High Court
Case No : Matter No. 310 of 1963

Eastern Railway Employees' Congress	APPELLANT
Vs	
General Manager, Eastern Railway and Others	RESPONDENT

Date of Decision : 10-12-1964

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 19(4), 226
Government of India Act, 1935 — Section 241(2)
Railway Establishment Code, 1951 — Rule 1, 3

Citation : AIR 1965 Cal 389 : (1966) 2 LLJ 849

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : Nani Chakraborty, Anil Sen and Kanika Banerjee, for the Appellant;
R.L. Deb and R.M. Dutt, for the Respondent

Final Decision : Allowed

Judgement

1. The Petitioner before me, under Article 226 of the Constitution, is a Trade Union of Railway employees, registered as the Eastern Railway Employees Congress, which claims a membership of over 34,000 consisting of Class III and IV (i.e., non-gazetted) staff of the Eastern Railway. On the representation of the Petitioner, the Government of India offered their recognition to this Trade Union, by their letter of February 2, 1962, subject to certain terms and conditions (Ann. A to the petition), and, on the acceptance by the Petitioner of those terms and conditions, such recognition was conferred by the Government letter of February 7, 1982 (Ann. D). One of these terms and conditions was that the Petitioner would revise its constitution to bring it in conformity with the terms of Part C of App. XIII (hereafter referred to as "the Appendix") of the Railway Establishment Code, Vol. I (hereinafter referred to as "the Code") which lays down the "conditions precedent to the recognition of a Union by a Railway Administration". The petitioner's case is that before the petitioner could take steps in the matter of revision of its constitution, Respondent No. 1, the General Manager of the Eastern Railway, at the instance of Respondent No. 2, the Chief Personnel Officer,

arbitrarily and illegally deleted from its order of recognition, one of the branches of the petitioner, namely, the Printing Branch (vide circular of the 26th March. 1962, being Ex. E to the counter-affidavit filed by respondent No. 2), and that negotiations relating to that matter are still going on as between the parties (vide Ann. O to the Affidavit-in-reply). By another order of the 29th September, 1962, respondent No. 2 directed an examination of the books of account and membership register and as a result, the petitioner alleges, all the books of the petitioner were detained in its head office and its normal functioning was hampered so that it was not possible to convene the annual general meeting of the petitioner trade union at which only the constitution could be revised.

2. On July 22, 1963, a charge-sheet issued by respondent No. 1 was served upon the petitioner to show cause why the recognition granted to the petitioner should not be withdrawn in view of two charges, which are as follows:

"1. Violating the terms and conditions of recognition granted to you under this office letter No. AE 4223/11/EC dated 7-2-62, in that-

Non-production of the pledge forms of railway employees, who are members of the Eastern Railway Employees" Congress, when demanded by the administration under letter No. AE. 4223/EC dated 21-3-63, on the ground that it was not obligatory and that such forms are to be signed only when they are required to be done by the Working Committee vide your letter No. WP/C/ORG/63 dated 23-3-63. This is in direct contravention of para 13 of Part C of Appendix XIII of the Indian Railway Establishment Code, Vol. I (1951 edition), and para 5 of the Constitution of the Eastern Railway Employees Congress.

2. Inflating the number of members:

(a) by showing some persons twice in the same year. A few such cases are shown in Annexure "A",

(b) by showing names of employees when such persons were not really members of the Eastern Railway Employees" Congress. A few such cases are shown vide Annexure "B" ".

3. On these charges, respondent No. 1 passed the impugned order on August 5, 1963 withdrawing the recognition granted to the petitioner union, on the basis of an incomplete statement which the petitioner had been obliged to submit on July 31, 1963. The material portion of the impugned order (Ann. M) is in these words-

"I have carefully considered the reply to the show-cause notice as given in your letter No. EREC/Con/1/63, dated 31-7-63 and also the facts brought out in your letter of even No. of 1-8-63 and am satisfied that the charges contained in the laid show cause notice No. AE. 4223/11/EC. dated 19-7-63 have been established. I am also satisfied that you have been given all reasonable facilities to submit your reply to the show-cause notice mentioned.

Now, in terms of para 1 of the Rules for the recognition of Associations of Non-

gazetted Railway servants under Part "B" of Appendix XIII of Indian Railway Establishment Code, Vol. 1 (1951 edition), which was sent to you as an enclosure to this office letter of even number dated 2-2-62 and accepted by you under your letter No. GS/Recognition/62/4 dated 3-2-62, I, the undersigned, hereby withdraw the recognition granted to you by my letter No. AE. 4223/11/EC. dated 7-2-62, with Immediate effect."

4. The petitioner challenges this order as lacking in jurisdiction, being contrary to the Rule and also as violative of the rules of natural justice, on the grounds that-- (a) Charge 1 had no foundation, because, according to the existing constitution of the Petitioner union, no member was required to file any pledge form unless required by the Working Committee; and that since there was no such requirement so far, nothing could possibly be produced; (b) Charge 2(a) was indefinite and vague and proper materials in support of the allegation were never disclosed to the petitioner; (c) Though in relation to charge 2 (b), inspection of certain papers was allowed to the petitioner on August 8, 1963, the impugned order was passed by respondent No. 1 without waiting for the petitioner's representation on the basis of such inspection.

5. On behalf of the respondents, affidavit-in-opposition has been filed by respondent No. 1 (Md. Asghar Asraf), the Chief Personnel Officer. The contents thereof will be referred to in their proper places.

6. On behalf of the respondents, Mr. Deb has taken a preliminary point that since the rule nisi was confined to ground No. V of the petition, the petitioner should not be allowed to urge that the impugned order is without Jurisdiction being contrary to the rules governing the parties since ground No. V relates only to the allegation of contravention of natural justice in not giving proper opportunity to the petitioner in showing cause to the charges. I am, however, unable to uphold this contention for the following reasons-

(i) Ground No. V is founded upon and relates to the statement made in para. 31 of the petition, which distinctly alleges that the impugned order is "contrary to natural justice and also the rules". The opening language of ground No. V also starts with "contrary to the rules and the principles of natural justice" and the enumeration in sub-paragraphs (a) to (c) under ground No. V is only by way of illustration of the second part of the ground as to how the rules of natural justice have been violated. It does not seem to me that the Court, in issuing the rule nisi, intended to debar the petitioner from urging the legal ground, that is, the order ultra vires the statutory rule (viz. Rule 1 of App. XIII of the Code) which is specifically mentioned in impugned order itself as the foundation thereof.

(ii) It appears that this identical point was taken by Mr. Deb in a Civil Revision case before a Division Bench in Mahananda Dutt and Co. (P), Ltd. v. Uma Charan, 68 Cal WN 179, but was overruled. In that case, the Bench clearly laid down that the Court is not precluded, at the final hearing of a rule, from considering a ground other than that on which the rule nisi might have been

issued, of course, after giving proper opportunities to the parties. Since in the case before me, the ground of the impugned order being contrary to the rules was taken in the petition and contradicted in the affidavit-in-opposition and also fully debated by Mr. Deb at the hearing, the preliminary objection raised by Mr. Deb must be rejected.

7. On the merits, the sheet-anchor of the petitioner's case is rule 1 of the Part B of App. XIII to the Code, itself, which is the professed basis of the impugned order. Admittedly, these rules have a statutory force, having been made in exercise of the power conferred by Section 241(2) of the Government of India Act, 1935, so that, the relevant part of the rule in question being mandatory, any breach thereof will render the impugned order ultra vires and without jurisdiction.

8. Appendix XIII of the Code contains the "Rules for the recognition of service associations of Government servants". There is no bar in the Code against Railway servants forming associations, but if an association seeks Government recognition, it must comply with the terms and conditions laid down by or under the rules contained in App. XIII, Part B of these rules includes the "Rules for the recognition of associations of non-gazetted railway servants" and Rule 1, with which we are instantly concerned, provides how the recognition to such associations shall be granted and withdrawn. Rule 1 says-

"Government is prepared to accord official recognition to associations of its industrial employees. The grant and continuance of recognition rests in the discretion of Government, but recognition when granted will not be withdrawn without due cause and without giving an opportunity, to the association to show cause against such withdrawal."

9. It is clear from the above rule, on its plain reading, that while the granting of recognition is completely at the discretion of the Government, in the matter of withdrawal of a recognition, after it has been granted, the discretion of the Government is subject to two limitations, namely, that no withdrawal shall be valid unless-

(a) there is "due cause" for such withdrawal;

(b) it is ordered after giving "opportunity" to the association concerned "to show cause against such withdrawal."

10. The petitioner complains that both these conditions have been violated by the impugned order. Before entering into the merits of this complaint, it would be useful to consider why the discretion of the Government is sought by the rule to be fettered by limitations, in the matter of withdrawal. The answer, in brief, is the nature of the right which is liable to be affected by the withdrawal of the recognition.

11. The right to form an association with other individuals is a fundamental right of a citizen guaranteed by Article 19(1)(c) of our Constitution and this includes the right to form a trade union, which is a species of an association, subject, of

course, to the restrictions contained in the relevant limitation clause of Article 19. That this fundamental right belongs also to Government servants has been acknowledged by the Supreme Court in cases like *O.K. Ghosh and Another Vs. E.X. Joseph*, . Hence, only reasonable restrictions may be imposed upon the formation or continuance of such associations (ibid). The reason why the right to form a trade union of employees has come to be recognised as a fundamental right of an individual is the need, in modern times, for "collective bargaining" to protect the interests of labour as against the employer who has gained strength in the bargain with the development of industry and capital. In 1937, the American Supreme Court observed that "'union was essential to give labourers opportunity to deal on an equality with their employer". [*National Labour Relations v. Jones* (1937) 301 U. S. 1] Even when the State itself is the employer, the need of the employees to form trade unions to secure their rights by proper representation through unions is recognised and the very foundation of App. XIII of the Code is an acknowledgment of that right of Railway servants to form trade unions. A trade union, as defined in the Chamber's Encyclopaedia, is "an association of wage-earners or salary-man, formed primarily for the purpose of collective action for the forwarding or defence of its professional interests."

12. Of course, we are, in the case before me, concerned with the withdrawal of Government recognition from a trade union and not with any restriction imposed upon the formation or continuance of the trade union itself and we cannot, in this context, overlook the observation made by the Supreme Court in *Raghubar Dayal Jai Prakash Vs. The Union of India (UOI) and Others*, that though the right to form an association is guaranteed by Article 19(1)(c) of the Constitution, there is no such fundamental right "to obtain recognition of the Government" to any association so formed. In that case, it was further held that the right to association guaranteed by Article 19(1)(c) could not be extended so as to assert that an association had a fundamental right to be immune from any conditions or limitations imposed on Government recognition as might prevent the association from an "effective functioning" to achieve its lawful objects. This proposition, however, has to be read with the facts of that case. The Court, in *Raghubar's* case (ibid.), followed its earlier decision in *All India Bank Employees' Association Vs. National Industrial Tribunal and Others*, , to the effect that though the right to form an association or a collective body had been guaranteed by the Constitution by Sub-clause (c) of Article 19, by forming such collective body, its members could not acquire any higher footing as regards other fundamental rights which, as individuals, they could not claim. Thus, when the association related to persons engaged in a business, it could not be urged that the only restrictions which the State could impose upon such association were those authorised by Clause (4) which related to Sub-clause (c) of Clause (1) and that such association was immune from restrictions which the State could legitimately impose upon every individual engaged in a business or profession under Clause (6) which related to Sub-clause (g) of Clause (1) of Article 19. Following this earlier decision, the Court held in *Raghubar's* case that Gur being an essential

commodity, a restriction imposed by the Government that forward trading in this commodity could be lawfully carried on only by recognised associations and that such recognition could be granted or continued subject to conditions such as price control even though the prices fixed might be unprofitable to the trading association, must be held to be a reasonable restriction under Clauses (5) and (6) of Article 19.

13. In the instant case, we are not concerned with the regulatory power of the State over any business, and the petitioner union has not been formed for any business or, in particular, for dealing with anything of special value to the society, such as an essential commodity. That, apart from such special considerations, recognition of the Government may attain constitutional importance, where without such recognition, the fundamental right to form an association under Article 19(1)(c) would be "illusory", is demonstrated by the later decision in *O.K. Ghosh and Another Vs. E.X. Joseph*, . There it was pointed out that condition as to the recognition or its withdrawal, in such circumstances, can be validly imposed only if they are proximately or rationally relatable to a ground specified in Clause (4) of Article 19, under which only restrictions upon the freedom of association could be upheld. In *O.K. Ghosh and Another Vs. E.X. Joseph*, , the exercise of the freedom of association would have been illusory to the Government servants without the recognition of Government, because the impugned rule prohibited a Government servant to be or to continue to be the member of an association which was not recognised by the Government or from which the recognition had been withheld. The fundamental right of association was thus vitally linked up with the Government recognition.

14. The Reference on the Kerala Education Bill, 1957, In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, offers another instance, though in a different context, of circumstances in which the refusal or withdrawal of Government recognition may render nugatory the exercise of a fundamental right. In that case, Das, C.J., speaking for the majority, pointed out that the effect of the relevant provisions of the Education Bill was that:

"scholars of unrecognised schools are not permitted to avail themselves of the opportunities for higher education in the University and are not eligible for entering the public services"

The result of this was that though there was no fundamental right to obtain recognition from the Government to educational institutions set up by the minority community, the right guaranteed by Article 30(1) of the Constitution to the minority community to establish institutions of their own choice was rendered illusory by the impugned provisions of the Bill in so far as education in the institutions established by the minority community would be worthless for all practical purposes without Government recognition since scholars of the unrecognised institutions would be eligible neither for higher education nor for employment in the public services. In the words of Das, C. J.-

"Without recognition, therefore, the educational institutions established or to be established by the minority communities cannot fulfil the real objects of their choice and the rights under Article 30(1) cannot be effectively exercised. The right to establish educational institutions of their choice must, therefore, mean the right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions".

15. Let us, therefore, see whether, in the instant case, withdrawal of recognition by the Government would render illusory the freedom of association which belongs to the members of the petitioner union.

16. Rule 6 of Part A of App. XIII Itself explains the advantages of recognition of an association of employees by the Government. It says-

"Recognition is accorded for the purpose of enabling the employees of Government to communicate their needs to Government or to Government Officers, and it may be withdrawn by Government if an association adopts other methods of ventilating those needs."

17. Rule 5, again, provides-

"Representations from such associations, whether made orally, by deputation, or presented in writing, may be received by Government Officers notwithstanding anything contained in the rules relating to the submission of petitions and memorials by Government servants."

18. It is evident that unless a trade union is recognised by the Government, it shall have no collective footing in making representations to the Government and that its representations will be subjected to the rules and regulations governing the memorials or petitions of individual employees. The incidental advantages of recognition by way of leave to the members and office-bearers to attend meetings of the union and in the matter of transfer are enumerated in para. 34 of the Affidavit-in-opposition. Without such advantages, it will be difficult, if not, impossible for an unrecognised trade union, to maintain the association and to serve the very purpose for which a trade union is formed, namely, to represent the grievances of the employees collectively to the employer (i.e., the State in the instant case), and to bring upon the collective weight of the trade union in the negotiations on behalf of the employees in the matter of such grievances.

19. I have digressed into the present topic only to show the nature of the right which will be affected by the withdrawal of recognition from the petitioner union. Even though there is no fundamental right to obtain recognition or to resist withdrawal, it is In view of the nature of the right of association and of the importance of recognition in relation thereto that the two limitations have been imposed upon the Government's power to withdraw recognition by Rule 1 of Part B of App. XIII and no interpretation of Rule 1 will be proper which takes no account of this background behind the rule.

20. Of the two limitations imposed by Rule 1, one is substantive, namely, the

requirement of "due cause" and the other is procedural, namely, the requirement to give opportunity.

(A) So far as "due cause" is concerned, Mr. Deb submitted at the outset that it was not justiciable in the same sense or to the same extent as the procedural obligation to give opportunity. In short, his contention was that the decision to withdraw recognition being an administrative determination, the Court could interfere only where the exercise of the power was mala fide. I do agree with Mr. Deb that this Court, sitting under Article 226 of the Constitution, cannot act as a Court of appeal to revise the determination of the administrative authority so as to substitute the Court's own views as to what is a due cause and what is not. I am also not prepared to accept the extreme contention put forward on behalf of the petitioner by Mr. Chakravarty, that an exhaustive enumeration of "due causes" is given in Rule 3 of Part B and that in order to be a "due cause" for withdrawal of recognition under Rule 1, the cause must be one of those enumerated in Rule 3, or, at least analogous to them. Rule 3 enumerates the conditions on the fulfilment of which only recognition will be "ordinarily granted or continued". The word "ordinarily" makes it clear that the provision is enabling and illustrative, not exhaustive or obligatory.

21. At the same time, I am unable to accede to Mr. Deb's contention that the Court can interfere with the exercise of an administrative statutory power only on the ground of mala fides in the sense of absence of good faith. Ever since: the House of Lords' pronouncement in *Roberts v. Hopwood*, (1925) AC 578 (613), it is established that the doctrine of ultra vires which attaches to any statutory power requires not only that it must not exceed the power conferred by the statute, that it must be exercised in good faith, but also that it must not be exercised arbitrarily or capriciously, but "reasonably". The statutory authority cannot "do what he likes" but must "follow the course which reason dictates", (*ibid.*). Even though the Court cannot substitute its own view as to what should be the proper course in such circumstances, it should interfere if the statutory authority has come to a decision "that no reasonable body would have come to". *Associated Provincial Picture Houses v. Wednesbury Corpn.* (1947) 2 All ER 680 (683-4) CA.

22. It may be asserted, without more, that no reasonable man could consider as "due cause" a cause which is non-existent. The case of the petitioner is that charge No. 1 at Ann. E was nonexistent.

23. This charge, in substance, is that the petitioner had contravened para. 13 of Part C of App. XIII of the Code and para. 5 of the Petitioner Union's own constitution by failing to produce pledge forms signed by its members. Now, so far as the breach of its own constitution is concerned, it has been rightly contended by the petitioner that there has been no breach since para. 5 of that constitution requires to obtain pledge forms signed by its members only "if required by working committee". The existence of these quoted words at the end of para. 5 of the constitution was disputed on behalf of the respondent, but these

words appear in the original constitution produced before me by the Registrar of Trade Unions which I am bound to accept as authentic so far as the present proceeding is concerned. It was contended by Mr. Deb that these words did not occur in the copy of the constitution which was submitted by the petitioner to the respondents. Of course, the attested copy of the constitution which had been submitted by the petitioner in 1959--a former occasion when the petitioner had applied for recognition--does not contain these words. The case of the respondents is that even in 1962, that is, the occasion when the recognition had been granted, the copy of the cyclostyled constitution which was submitted by the petitioner to the respondents did not contain the disputed words. On the other hand, it has been contended on behalf of the petitioner that the copy produced before me and alleged by the respondents to have been submitted in 1962 cannot be the copy submitted by the petitioner because it is not attested and that responsible officers like the respondents would never have accepted an unattested copy. Be that as it may, it is neither necessary nor possible for me to solve this riddle in the present proceeding. If it is suggested by respondent No. 1 that the petitioner has obtained the recognition by fraudulently submitting a false copy of the constitution, they might have proceeded to withdraw the recognition on that charge but that is not the charge issued in the instant case. The respondents may also proceed against the petitioner under the general law and before the ordinary Courts for such fraud but the determination of such questions of fact is beyond the scope of a proceeding under Article 226. Incidentally, I should point out that the statement in para. 19 (p. 16) of the counter affidavit that the "discrepancy in the copy of their constitution as alleged by them was brought to the notice of the Railway Administration not until as late as on 31st July, 1963" cannot be accepted as true, since, by the letter, dated the 21st March, 1963 at Ann. Q of the Affidavit-in-reply, the petitioner had formally communicated to the Chief Personnel Officer himself, who has filed the counter-affidavit, a copy of the text of para. 5 of the constitution as it exists in the original maintained in the custody of the Registrar of Trade Unions, but no action has been taken by the respondents since then on such a serious matter.

24. Once it is held that the Petitioner Union had no obligation to obtain signed pledge forms from its members until its working committee so required, it follows that there has been no contravention not only of para. 5 of the constitution itself but also of para. 13 of App. XIII, as laid in charge No. 1. Para. 13 is in these words-

"(a) All employees of the railway shall be entitled to become ordinary members of the Union on their signing an agreement to the effect that they will abide by the rules of the Union...."

25. Paragraph 13, however, is a part of Clause (iv) of Part C of the Appendix which says-

"That the rules of the Union, subject to such modifications as may be mutually agreed between the Administration and the Union, shall be as follows. .. ."

26. It is clear that though ordinarily para 13 must be one of the requirements of the rules, that requirement may be modified by agreement between the Union and the Railway Administration before granting recognition to the Union, because Part C lays down "the conditions precedent to the recognition". It may be mentioned in this context that the very fact that in the letter, dated the 2nd February, 1962 (Ann. A, p. 19), respondent No. 1 imposed the condition, subject to which recognition would be granted, that the Petitioner Union:

"undertake to revise your constitution at the earliest opportunity in conformity with Part "C" of Chapter XIII of the Indian Railway Establishment Code.",

does, in the absence of any alternative explanation as to any different point on which the constitution submitted by the petitioner was inconsistent with the requirements of Part C, lend support to the contention made on behalf of the petitioner "that that inconsistency was as to the requirement of para. 13 and that the respondents knew about that discrepancy before granting the recognition and that is why the respondents asked the petitioner to revise its constitution in that behalf as a condition subsequent, subject to which the recognition would be granted. At any rate, once it is held for the purposes of the present proceeding that the copy kept by the Registrar of Trade Unions is the authentic copy of the constitution of the Petitioner Union, no charge of violation of that constitution or of para 13 of the Appendix can be sustained. If the respondents are aggrieved by any alleged fraud or interpolation committed by the petitioner, the respondents must seek their remedy in the proper forum.

27. It has, however, been contended on behalf of the respondents that by its letter of the 3rd February, 1962 (Ann. C, p. 25), the petitioner had undertaken to revise its constitution to bring it in conformity with Part C of the Appendix "at our earliest opportunity" and that since the petitioner had failed to make that revision in the course of over one year which had elapsed at the date of the charge, the withdrawal of the recognition could be supported even on the ground of breach of that undertaking. But charge No. 1, as framed, does not relate to the breach of that undertaking. If the respondents sought to withdraw the recognition on that ground, a specific charge to that effect should have been brought by the respondents and the petitioner given an opportunity to meet that charge as required by Rule 1 of Part B. We are not concerned with the breach of that undertaking in the instant proceeding arising out of the existing charges and that is why I do not deem it necessary to go into the merits of any of the explanations offered by the petitioner as to its inability to take prompt steps for revising the constitution, e.g., that shortly after the recognition granted to the petitioner, respondent No. 2 deleted one of the branches of Petitioner Union, which amounted to a partial withdrawal of the recognition and interfered with the functioning of the Union and which, in view of para. 1 of Part B of the Appendix, was beyond the powers of respondent No. 2 (vide Ann. E to the Counter-affidavit). It has been shown at the hearing that the required revision of the Constitution has been effected during the pendency of the hearing, by deleting

the disputed words, and that the petitioner has stated obtaining signed pledge forms from its members. This demonstrates, at least, that the petitioner would have revised the constitution in time if a specific charge for withdrawal of the recognition on the ground of breach of the undertaking had been served upon the petitioner and it had been offered proper opportunity to meet that charge.

28. As matters stand, it must be held that charge No. 1 as framed had no factual basis and was, accordingly, not a "due cause" within the meaning of Part B of the Appendix.

29. As regards charge No. 2 also, Mr. Chakravarty contends that since the charge is one of inflation of membership, it cannot be held to be a "due cause" since the volume of membership is nowhere specified in App. XIII as a relevant consideration either for the grant or for the withdrawal of recognition to an association. Though there is apparent logic in this contention, I do not consider it necessary to express any final opinion on this point since as regards charges No. 2, the contention that the other part of Rule 1, that is to say, the requirement to give opportunity to show cause, has been violated, has been clearly established.

(B) Of course, the rule limply requires "opportunity" and dot not mention that such opportunity must be "reasonable". But the concept of adequacy or reasonableness not only follows from the Dictionary meaning of the word "due" but is Inherent In the requirement of "opportunity" being given, for, the object of Rule 1 is to afford the association sought to be affected by the withdrawal of recognition an opportunity to meet the charge or cause upon which the recognition is sought to be withdrawn. If the opportunity is given in such circumstances that the petitioner gets no proper time, or no chance of referring to the requisite materials, for meeting the charges, it would be only a "colourable" compliance with the Rule, having regard to its object and the nature of the right which is sought to be affected by the withdrawal. The very word "opportunity" requires a reasonable opportunity to be afforded, just as the word "compensation" simpliciter was interpreted by the Supreme Court to imply "just" compensation or a "full and fair money equivalent" in *Bella Banerjee's* case, *The State of West Bengal Vs. Bela Banerjee and Others*, . Proceeding on the above footing, I agree with Mr. Chakravarty, for the petitioner, that there has been no valid compliance with Rule 1 as regards either of the two parts of charge No. 2.

30. Part (a) of charge No. 2 is that the petitioner has inflated the "number of members by showing some persons twice in the same year. A few such cases are shown in Annexure A". This Ann. A, which was annexed to the charges is at p. 29 of the petition. It is a list of some 29 members of the petitioner Union who have been given two receipts and in some cases, the two receipt numbers bear the same date.

31. The petitioner's complaint regarding this charge is that the charge as framed is vague and the respondents never supplied the petitioner the materials upon which this charge is based, even though the petitioner demanded the same. The

reply of the respondents, on this point, as contained in Ann. J to the petition (p. 41) and para 20 of the counter-affidavit is that the statement attached to the charge was "self-explanatory" and no further material was necessary. This contention, however, cannot be accepted, for the following reasons.

32. The statement at Ann. A, which shows double entry of the same member, is not a copy of the petitioner's membership register. It is evident from the statement that it has been prepared by the respondents with reference to the receipts granted by the petitioner to the 29 persons mentioned in the statement. Receipts may be granted for current subscription or for arrears or even perhaps for other purposes, such as donations. The mere fact that two receipts have been issued in favour of the same person does not necessarily show that the same persons have been enlisted as a member more than once in the Membership Register of the union. If two receipts have been granted may be, for two different purposes on the same date, in the case of a union whose membership strength as registered with the Registrar of Trade Unions exceeds 33,000, it can hardly be said that the very granting of two receipts is a fraudulent transaction, in the absence of a reference to the Membership Register itself which demonstrates such double entry. The statement at Ann. A was prepared by or at the instance of the officers who had inspected the records of the petitioner before issuing the charge. Hence, the report of sough inspecting officer, if any, could have, in the absence of any reference in the charge to the Membership Register itself, thrown light on the question how the respondents were satisfied that the persons in question had been enrolled as a member twice, in order to show a fictitious membership. I do not accept Mr. Chakravarty's contention that fictitious enrolment of members may not be a "due cause" for withdrawing recognition, but his further contention that where recognition is not dependent, according to the Code, upon the volume of membership, there was little inducement to the petitioner to have made some 29 fictitious entries in a total membership of over 33,000, cannot be thrown out as untenable. It is in this background that the petitioner's demand for supply of the inspecting officer's report per its letter of 29-7-63 (p. 34, Ann. H) has to be appreciated. It is in reply to this demand that the General Manager wrote in his letter of the 30th July (Ann. J.):

" . . .the enclosures to the show cause notice arc self-explanatory and are sufficient to submit proper reply to the show cause notice. The question of supplying a copy of the full report, therefore, does not arise."

33. It is to be noted that the Manager did not take the stand that there was no written report of the inspecting officers, nor did he supply any explanatory note to explain how the double issue of receipts showed double enrolment in the membership Register, so as to make an inflated membership. The Register of members assumes importance also in connection with charge No. 1, since Rule 4 of Part B requires the association to submit "copies of the rules of any recognised association, of its annual accounts and of its list of members" to the Government. It has been contended on behalf of the petitioners that there is no

specific rule authorising Government to require production of pledge forms as such nor to withdraw recognition on the ground that more than one receipts have been issued in favour of the same person. Be that as it may, if the charge is one of inflation of membership, the basic material would be the register or list of members which Government is entitled to inspect under Rule 13(d) of the Appendix. The receipts, per se, demonstrate nothing on this point and the petitioner can legitimately complain that there has been a denial of opportunity as required by Rule 1 of Part B inasmuch as the respondents have refused to supply any materials to the petitioner to explain the statement in Ann. A, which is not really "self-explanatory" as claimed, and also denied a hearing to the petitioner, which it demanded by its letter dated July 31, 1963 (Ann. I, p. 39), so that it might satisfy the respondents by producing the necessary records.

34. The second part of charge No. 2 is that the petitioner has inflated the number of members:

"by showing the names of employees when such persons were not really members of the Eastern Railway "Employees" Congress. A few such cases are shown vide Annexure "B" ".

35. Annexure B to the charge gives a list of 17 persons who "though shown as members of the Eastern Railway Employees" Congress disclaimed membership (neither applied for membership nor paid subscription)". As to this, the plea in para 16 of the Petition was that the officers of the respondents were creating fraudulent records by "securing false declaration . This plea is supported by the allegation in the letter of the 5th August (Ann. L, p. 46) that out of the 17 persons specified in Ann. B to the charge and the suggestion that false declarations may have been taken from the Muslim employees at the instance, of Mr. Ashraff, to whom a complaint about Pakistani Muslim employees had previously been made by the petitioner. It is not necessary to pursue this complaint of personal malice against Mr. Ashraff in this proceeding. But several broad circumstances in this connection have to be mentioned in order to determine whether the petitioner has been afforded proper opportunity to meet the relevant charge. Whether prompted by communal considerations or not, Mr. Ashraff had committed an ultra vires act to the injury of the petitioner union by cancelling one of the branches of the union shortly after its recognition and since then the relationship between the petitioner and this officer cannot be supposed to be cordial. Nine of the 17 persons included in the list belong to the Printing Department which had been truncated from the petitioner union under orders of Mr. Ashraff and thereafter it was not legitimate to withdraw recognition from the petitioner upon any charge relating to membership relating to the Printing Department.

36. The statement in Ann. B to the charge was prepared at a later point of time than the dates when these 17 members are shown in the petitioner's books as having enrolled themselves as members. It is not absurd to imagine, in this state of affairs, that some persons who had, in fact, enrolled themselves with the

petitioner union may have changed their minds subsequently, under different considerations. Whether that was so or not, was a matter for an objective determination, and the point for determination was not whether they have subsequently disclaimed but whether the initial entry was false. Even the list in Ann. B to the charge specifies the numbers of receipts which purport to have been issued in lieu of subscription. If the petitioner had issued receipts without realising money, that was sure to lead to false accounts in relation to funds, apart from the inflation of members, which could be found out only on further inquiry. In this state of affairs, petitioner's contention that this charge required at least an opportunity being given to the petitioner to produce and explain its records to rebut the charge cannot but be accepted.

37. Respondent No. 1 has further conceded that it was not possible for the petitioner to meet this charge without inspection of the declarations obtained from these 17 persons as to their disclaimer. For, in his letter of the 30th July (Ann. J, p. 41), the General Manager, in reply to the petitioner's demand for copies of documents forming the basis of the Ann. B to the show cause notice, staged:

"The administration is in possession of written statements from the persons, among others, shown in the Annexure "B" to the above show cause notice stating unequivocally that they have never enrolled themselves as members of the Eastern Railway Employees' Congress If the Union so desires, it may send its authorised representative to inspect those documents by calling on the Chief Personnel Officer to this Railway on any working day before 3-8-63 up to which the time is hereby extended for submission of the reply to the show cause notice by the Union."

38. In order to appreciate this letter, it is necessary to refer to its history. By the show cause notice (Ann. E), the General Manager gave the petitioner only 7 days" time to submit its explanation from the date of issue of the letter, which means that though the petitioner actually received the notice on the 22nd July (vide Ann. F), it was to submit its statement by the 26th July. On the 25th, the petitioner wrote to the Chief Personnel Officer to extend the time up to the 1st week of August, since its General Secretary was away in connection with a General Meeting, It was urged before me that this was a lame excuse. But, having regard to the fact, that the petitioner union was a huge assembly and a private organisation, from which mechanical promptness could not reasonably be expected, it can hardly be said that 4 days" time was sufficient to offer an explanation in a matter which cut at the very existence of the union. Nor is it apparent that there was any emergent circumstance which induced the respondents to offer the petitioner only four days" time in such a vital matter. Be that as it may, the General Manager, in reply, extended the time up to the 31st of July (Ann. G, p. 32), with a warning that unless the petitioner submitted its representation in reply to the notice by the 31st, the General Manager would proceed ex parte. On the 29th July, the General Secretary wrote to the General

Manager that the explanation could not be submitted until copies of the report of the inspecting authority as well as of the documents to explain and support charge No. 2 were supplied to the petitioner. It is in reply to this demand that the General Manager wrote his letter of the 30th July, at Ann. J, the contents of which have just been produced. But before the letter in Ann. J could reach the petitioner, the petitioner was obliged to submit the statement dated the 31st July, at Ex. I (p. 35), since by his letter in Ann. G, the General Manager had threatened the petitioner with an ex parte order unless the explanation was submitted by the 31st. It was made clear by the petitioner in this explanation of the 31st that it was not possible for it to meet charge No. 2 unless particulars of charge No. 2 with supporting materials were furnished and "we reserve our right to furnish the necessary explanation on receipt thereof." It is in the background of this situation that we are to read the General Manager's reply of the 30th July at Ann. J. and the impugned order of the 5th August.

39. By this letter at Ann. J the General Manager, in effect, acknowledged several contentions made on behalf of the petitioner, for instance,--

(a) That whether the 17 persons had in question enrolled themselves as members of the petitioner union was an objective fact which could be determined only upon an examination of the writings or signatures of these persons, if any, in the possession of the petitioner as well as of the respondents.

(b) That it was not proper for the respondents to come to any conclusion from the alleged declarations in the custody of the respondents alone, for, it was acknowledged that the question for determination was "that they have never enrolled themselves as members", and the primary material for determining this fact was not the subsequent writings, if any, but the initial ones, if any.

(c) That whatever might have been the laches of the petitioner in its failure to submit its explanation in answer to the show cause notice within the 7 days" time limited by the notice (Ann. E) or thereafter up to the 30th July, that was wiped off by this letter of the General Manager, in which the petitioner's contention that no explanation could be submitted until the petitioner was allowed to inspect the documents alleged to have been in the possession of the respondents, was accepted.

40. The inspection was eventually made by the petitioner's officers on the 3rd of August. It could not be held earlier because the General Manager's permission to the employees to attend his office for the purpose of inspection at 11 A.M. on the 3rd was not issued prior to the 2nd August (vide Ann. K, p. 44). The General Manager did not wait beyond the 5th of August to enable the petitioner to submit its final explanation on the basis of the inspection already held on the 3rd, but passed the impugned order withdrawing the recognition on the basis of the explanation submitted on the 31st July, which as I have already stated, was virtually acknowledged as incomplete by the General Manager himself, by allowing the petitioner's officials to inspect the material documents without

which, the petitioner contended, no complete and final explanation could possibly be submitted. The question for my determination thus ultimately narrows down to this:

(i) Was the petitioner offered proper opportunity between the 3rd and the 5th August?

(ii) Was the petitioner guilty of its own laches in not availing itself of that opportunity?

41. The answer to these questions is obvious because the 3rd August happened to be a Saturday and the 4th a Sunday, and on the 5th, the petitioner did, in fact, draw up a final explanation (Ex. L) and send it to the General Manager, but it could not physically reach the latter before he actually passed the impugned order that very date. In view of the fact that the intervening day was a Sunday, it can hardly be said that the petitioner was guilty of laches in submitting the final explanation earlier or that the respondent acted reasonably in proceeding to make his order on the next working day, without waiting for the petitioner's explanation. Be that as it may, the fact remains that the contents of Ex. L have not been considered by the General Manager in making the impugned order nor has he considered the documents which the petitioner offered, in its letter in Ann. L, to produce in order to satisfy the General Manager that either part of charge Mo. 2 had no foundation.

42. What opportunity would be proper or adequate in a given case would depend upon its circumstances. I am of the opinion that, having regard to the circumstances of this case, the impugned order has been made without giving proper "opportunity" to show cause as required by Rule 1, and hence, the impugned order has been vitiated by want of jurisdiction. It also contravenes the principles of natural justice in so far as they are implicit in the Rule itself, just as the obligation to comply with the principles of natural justice has been deduced by the Supreme Court from the expression "reasonable opportunity to show cause" in Article 311(2) of the Constitution, *P. Joseph John Vs. The State of Travancore-Cochin*, ; *Union of India (UOI) Vs. T.R. Varma*, ; *State of M. P. v. Chintaman* AIR 1961 SC 1623 (1629). My conclusion, in short, is that one of the two charges does not constitute "due cause" and the other charge violates the procedural requirement of the statutory Rule and the principles of natural justice, so that the impugned order is ultra vires and void in toto.

43. In this view of the matter, it is not necessary for me to enter into the further question which was raised by Mr. Deb, as to the effect of non-existence or invalidity of one or some of the charges where the impugned order purports to be founded on multiple charges.

44. In the result, this petition must succeed. Let the Rule be made absolute with costs, and an order of mandamus be issued directing the respondents to cancel the impugned order dated the 5th August, 1963 and directing them not to give effect to the same against the petitioner. Nothing herein will, however, prevent

the respondents to proceed afresh according to law.

45. The operation of this order will remain stayed for a period of one week from this date.