
(2008) 05 AHC CK 0064
In the Allahabad High Court

North Eastern Railway Mazdoor Union and Shri K.L. Gupta, APPELLANT
General Secretary, North Eastern Railway Mazdoor Union

Vs

Union of India (UOI) and Purvottar Railway Shramik Sangh RESPONDENT
(Registration No. 2452)

Date of Decision : 23-05-2008

Acts Referred:

Constitution of India, 1950 — Article 19
Industrial Disputes Act, 1947 — Section 20, 22, 2A
Trade Unions Act, 1926 — Section 10, 15, 17, 18, 2

Citation : (2008) 118 FLR 544

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Shri Ravi Kiran Jain, Senior Advocate assisted by Shri Shamim Ahmad for the petitioner. Shri Govind Saran appears for the Railways. Shri B.N, Singh appears for respondent No. 4.

2. The petitioner is a trade union of Group "C" & "D" employees of the Indian Railways and is registered under the Trade Unions Act 1926. It did not secure the minimum percentage (35%) of single vote to the total votes polled, or the minimum percentage (30%) of the single vote of the total electorate, in terms of para-5 of the norms of recognition of Trade Unions in the "Modalities For Conducting "Secret Ballot" For The Purpose Of Granting Recognition To Registered Railways Trade Unions Representing All Categories Of Group "C and Group "D" Employees Of The Indian Railways". The petitioner raised an election dispute, which was held as not tenable by the competent authority of North Eastern Railways on 10.12.2007, giving rise to this writ petition.

3. The petitioner has challenged the order rejecting his representation dated 4.12.2007, on the grounds that the advertisements issued by the Railways as well as the mention of the word "provisional" in the ballot papers in accepting

petitioner's nomination is against the decision of this Court in Special Appeal No. 1479/2007 decided on 6.11.2007, holding that the petitioner was duly registered trade union. The words "provisional" in the ballot paper prejudiced the voter's on account of which petitioner failed to secure minimum percentage of votes. The petitioner has also challenged the findings that the representation of the election dispute was barred by time.

4. The Industrial Disputes Act 1947 (in short the Act), was enacted to make provisions for the investigation and the settlement of industrial disputes. The Act provides for machinery provisions for industrial arbitration for the resolution of existing or apprehending disputes without prescribing statutory norms for industrial relations. A "union" is defined under 2(qq) to mean a Trade Union registered under the Indian Trade Unions Act, 1926. The object of the enactment of Trade Unions Act 1926 was to end the unequal fight between the employer and employed, in the industries engaged in mass-production of commodities, services and large scale industrial units. The replacement of the employers by the Corporations with immense economic powers concerned the State not only with the problem of law and order but to place the employers and the employed on equal terms. The Trade Unions Act 1926 provides for registration of Trade Unions for the purposes of regulating the relations between the workmen and the employers or between the workmen and workmen and for imposing restrictive conditions on the conduct of any trade or business and to include freedom of two or more Trade Unions without affecting any agreement between the partners, as to their own business or between the employer and the employed and any agreement in consideration of sale of goodwill of a business or of an instruction in any provision, trade or handicapped (Section 2(h); "trade union" as defined in the Trade Unions Act 1926).

5. Any seven or more members of a trade union may, by subscribing their names to the rolls of Trade Union, and by otherwise complying with the provisions of the Act with respect to registration, apply for registration to the trade unions. The registration of a trade union presumes the satisfaction of the Registrar that the trade union has complied with all the requirements under the Act. The certificate may be cancelled u/s 10 or withdrawn on the application of the trade union or if the Registrar is satisfied that the certificate has been obtained by fraud or mistake or that the trade union has ceased to exist, or has wilfully after notice of the Registrar contravened any provisions of the Act. The right and liabilities of the registered trade union are enumerated in Section 15. The Act gives immunity to the office bearers of the trade union to criminal conspiracy in trade disputes, u/s 17 and in civil proceedings u/s 18. The disqualification of office bearers of the trade unions is provided u/s 21-A. The trade union may be dissolved u/s 27 with a notice to the Registrar, and is required to file returns u/s 28.

6. The Industrial Disputes Act 1947 or the Trade Union Act 1926 do not provide for recognition of the Trade Union by the employer. The State of Maharashtra enacted "Maharashtra Recognition of the Trade Unions and Prevention of Unfair

Labour Practices Act, 1971" (the Act of 1971) to provide for recognition of a trade union for facilitating collective bargaining for certain undertakings, to codify their rights and obligations and to confer certain powers on an unrecognised union to provide for declaring certain strikes and lock out as illegal etc.

7. The Balmer Lawrie Worker's Union challenged the provisions of Section 20(2) of the Act of 1971, providing recognition of only one Trade Union and giving it exclusive rights to represent workmen of any undertaking, consequently denying the right to a workman to appear or act or to be allowed to represent in any proceeding under the Industrial Disputes Act 1947 as violative of fundamental freedom to form association guaranteed Article 19(1)(c) of the Constitution of India. The writ petition as well as appeal were dismissed. Deciding the Civil Appeal No. 3527 (NL) of 1984 on 21.12.1984, Balmer Lawrie Workers' Union, Bombay and Another Vs. Balmer Lawrie and Co. Ltd. and Others, , the Supreme Court-held that since after the amendment and introduction of Section 2-A of Industrial Disputes Act 1947, by which the discharge, dismissal, retrenchment or termination of the services of individual workman, were treated as industrial dispute, notwithstanding that no other workman nor any union of workmen is a party to the dispute, and thus assuring individual workman the protection of grievance that a worker may have to take the services of a Trade Union of which he is not a member. It was no longer available to the petitioner to challenge Section 20(2) of the Act of 1971 as violative of Article 19(1)(a) and Article 19(1)(c) of the Constitution of India. The Supreme Court held that conferring the status of recognised union, on the union satisfying certain pre-requisites which the other union is not in a position to satisfy, does not deny the right to form association. In fact the appellant-union has been registered under the Trade Unions Act and members have formed their association without let or hindrance by any one. Not only that the appellant union can communicate with the employer, it is not correct to say that the disinclination of the workmen to join the recognised union violates the fundamental freedom to form association. It is equally not correct to say that the recognition by the employer is implicit in the fundamental freedoms to form an association. Forming an association is entirely independent and different from its recognition. Recognition of an Union confers rights, duties and obligation. Non-conferring of such rights, duties and obligations on an Union other than the recognised union does not put it in an inferior position, nor the charge of discrimination can be entertained. The members of a non-recognised association can fully enjoy their fundamental freedom of speech and expression as also to form the association.

8. In para-17 of the judgement, the Supreme Court further said:

17. The legislature has in fact taken note of the existing phenomenon in trade unions where there would be unions claiming to represent workmen in an undertaking or industry other than recognised union. Section 22 of 1971 Act, confers some specific rights on such non-recognised unions, one such being the right to meet and discuss with the employer the grievances of individual

workmen. The Legislature has made a clear distinction between individual grievance of a workman and an individual dispute affecting all or a large number of workmen. In the case of even an unrecognised union, it enjoys the statutory right to meet and discuss the grievance of an individual workman with employer. It also enjoys the statutory right to appear and participate in a domestic or departmental enquiry in which its member is involved. This is statutory recognition of an unrecognised union. The exclusion is partial and the embargo on such unrecognised union or individual workman to represent workmen is in the larger interest of industry, public interest and national interest. Such a provision could not be said to be violative of fundamental freedom guaranteed under Article 19(1)(a) or 19(1)(c) of the Constitution.

9. The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971 provides for recognition of a Trade Union which represents the largest number of workmen working in the undertaking to acquire the status.

10. In Food Corporation of India Staff Union Vs. Food Corporation of India and others, the Supreme Court, in order to facilitate collective bargaining, found that in order to see that the Trade Union which takes up the matter concerning service conditions of the workmen truly represents the workmen employed in the establishments, the trade union is first required to get itself registered under the provisions of the 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. When there are more than one registered trade union in an establishment, the question as to with whom the employer should negotiate or enter into bargaining assumes importance, because of the trade union with minority of the workmen/employees, the settlement, even if any arrived between the employers and the union, may not be acceptable to the majority and may not result in industrial peace. The Supreme Court found that the method to find out as to who should be the sole bargaining agent, has been a matter of discussion and some dispute. The "check off system" which once prevailed has lost its appeal. The method of secret ballot was gradually accepted. The method, however, should be so adopted and adjusted that it reflects the correct position as regards membership of the different trade unions operating in one and the same industrial establishment or undertaking. The Food Corporation of India and the Unions agreed to follow "Secret ballot system" in order to yield correct result. The Supreme Court, after hearing the counsels appearing in the matter, laid down certain norms and procedures in the nineteen-points to determine the strength of all eligible unions by secret ballot and then provided a mechanism for dealing with a situation which was not covered by the procedure and directed the elections to be held.

11. The Indian Railways is one of the largest employer in the country. It is divided into 16 zones. Each zones has Trade Unions representing the categories of Group "C" & "D" employees. At the apex level the entire unions spread over 16 zones of the Indian Railways and are affiliated either to the National

Federation of Indian Railwaymen, or All India Railwaymen Federation.

12. The Railway Board's letter dated 26.6.2002 addressed to all General Managers regarding the request of Bhartiya Railway Mazdoor Sangh and others for grant of recognition provided for preparing and accepting multiple membership, giving recognitions to unlimited number of unions to represent the same workmen, and to do away with the requirements in the earlier norms that membership of atleast 30% of the "work force" was exclusive to that union. The letter was challenged by the Southern Railway Mazdoor Union in Madras High Court. By the judgement between Southern Railway Mazdoor Union v. Railway Board and Ors. 2004 2 L.W. 407, the Madras High Court, while allowing the writ appeal, and while quashing the order of the learned Single Judge, as well as the order impugned, held that the railways are owned and operated by the Union of India. It's budget is to be passed by the Parliament. The moneys spent by it is a public fund. It must therefore operate on commercial lines and functions reasonably, non-arbitrarily and rationally. The Madras High Court found that recognition of large number of unions results in expenditure of crores of rupees. It found that at the current rate of Rs. 12.00 crores annual expenditure on all the office bearers of one recognised union, at all levels, the expenditure on the office bearers of ten recognised unions would be Rs. 120 crores. If the workmen were among themselves to agree to help each other so that each can enjoy the privilege extended by the employer to the office bearers of the unions, the number of additional unions that may in future claim recognition would be many more. In paras 32 to 35 the Madras High Court observed:

32. The right to form trade unions is not merely a statutory right under the Trade Unions Act, 1926, but after the coming into force of the Constitution of India, a fundamental right guaranteed under Article 19(1)(c) of the Constitution. That fundamental right, however, does not include as a concomitant right, the right to attain the objects of the union, and the right to strike, as held by the Constitution Bench in the case of All India Bank Employees Association v. National Industrial Tribunal AIR 1962 SC 172. The Court observed at paragraph 22 of the judgement:

On the construction of the Article, itself, apart from the authority to which we will refer presently we have reached the conclusion that even a very liberal interpretation of Sub-clause (c) of Clause (1) of Article 19 cannot lead to a conclusion that the trade unions have a guaranteed right to an effective collective bargaining or to strike either as part of collective bargaining or otherwise.

33. The exercise of the right to form and be a member of an Union is not dependent upon the recognition being given to that union by the employer. A Constitution Bench in the case of O.K. Ghosh and Another Vs. E.X. Joseph, held that Rule 4B of the Central Civil Services (Conduct) Rules 1955 restricting the right of a government servant to become a member of an association not recognised or when recognition is withdrawn, is unconstitutional.

34. Trade Unions, however, have neither a fundamental nor a statutory right to recognition except in some States like Maharashtra, where recognition of Unions is regulated by statute. Under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 there can at any one time be only one recognised union in an undertaking with at least thirty per cent of the workmen as it's members. There is no Central law providing for recognition of unions.

35. The concept of recognition came into vogue in the context of formation of multiplicity of trade unions each of them claiming to be representative of the workmen, recognition being given to the union considered to be the most representative. Having too many recognised unions would defeat the very object of recognition. For a long time, the objective of one union for one industry has been advocated. The Supreme Court in it's judgement in the case of State of U.P. Vs. District Judge, Unnao and Others, at paragraph 12 has observed that "National Commission on Labour chaired by late Sri P.B. Gajendragadkar, former Chief Justice of India, after unanimously and wholeheartedly expressing itself in favour of the concept of recognised union and it being clothed with the powers of sole bargaining agent with exclusive right to represent the workmen, addressed itself only to the question of method of ascertaining which amongst various rival unions must be accorded, the status of recognised union. Planting itself firmly in favour of the democratic principle, it was agreed that the union which represents the largest number of workmen working in the undertaking must acquire the status, as that would be in tune with the concept of industrial democracy. The fissures arose as to the method of finding out the membership. The Commission had before it two alternate suggestions for ascertaining membership (i) verification of membership by registers, and (ii) by secret ballot. As there was sharp cleavage of opinion, the commission left the question of adopting one or the other method in a given case to the proposed Industrial Relations Commission which was recommended to be set up if the recommendation of the Commission were to be accepted...." The cleavage of opinion has continued as before and the Industrial Relations Commission is yet to be constituted.

Thereafter in paras 47 to 53 it was observed:

47. The Railway Board, despite the Pandora's box being oporwd by it's new policy, seeks to recognise an unlimited number of unions at a mind boggling cost to be met from the State exchequer, solely on the strength of their membership figures set out in their returns filed before the Registrar of Trade Union, even though to it's knowledge those figures for the presently recognised unions and for those seeking recognition add up to much more than twice the number of those actually employed as non-gazetted workmen; and under the new policy there can hypothetically be an many recognised unions as there are workmen and even with a much lesser number, every workman can be an office bearer of a recognised union entitled to numerous special privileges paid for by the State.

48. The letter of 28.10.1985 which sets out the acceptance by the Railway Board

of the recommendations of the Railway Reforms Committee to double the minimum percentage of the non-gazetted workmen required to be members of the unions which seek recognition, from 15% to 30%, did not prescribe the mode now prescribed by the Board in its letter of 26.6.2002 for ascertaining the membership of the unions. By recommending the increase of the minimum percentage from 15 to 30, the Railway Reforms Committee obviously did not intend to pave the way for recognition of unlimited number of unions. What was obviously intended was to reduce the number of unions that could be recognised at any given point of time from six which was the maximum if each recognised union was to have at least 15% of the work force as its members, to three, which is the maximum number of unions that can be recognised on the basis that each such union has as its members at least thirty per cent of the non-gazetted work force.

49. That this prescribed percentage of workmen was to be the exclusive members of the recognised union is embedded in the very prescription of a minimum percentage, as the very object of that prescription is to ensure the representative character of the Union and to place a ceiling on the number of unions that can be recognised at any one time.

50. The object of recognition of the union being to place the employer and employees in a position where the union which is recognised, being one which truly represents a substantial body of workmen, can discuss the problems of the workmen with the employer, negotiate with the employer, and arrive at a settlement binding on the employer and the workmen, according recognition to numerous unions whose members are also members of other recognised unions, is not only superfluous, but is self defeating, undermining the very object of recognition. With numerous bargaining agents the number of friction points would not only escalate but the reaching of a settlement satisfactory to all would become far more difficult, if not impossible.

51. The policy now adopted in the impugned order is not a continuation of an old policy, but is an altogether new policy intended to accord recognition immediately to the Bhartiya Railway Mazdoor Sangh whose request for recognition had been turned down after its list of members had been scrutinised years earlier, inter alia, for the purpose of disregarding duplication of membership among that and other recognised unions. Along with this union it is proposed to give recognition to others as well, under the new criteria which ignores duplication of membership among the recognised unions. It also opens the doors for recognition of an unlimited number of other unions in future.

52. The claim that there is no change in policy as the strength of unions which were accorded recognition in the year 1965 by the Southern Railway was ascertained from the figures reported by them to the Registrar of Trade Unions, is misleading. Question of duplication of membership among the unions did not arise at that time as the aggregate of the membership claimed by the two recognised unions was less than the number of non -gazetted employees, and no

one doubted the fact that each of those unions had as its exclusive members thirty percent of the non gazetted work force.

53. The fact that the Trade Unions Act does not prohibit simultaneous membership in an unlimited number of union is wholly irrelevant for the purpose of according recognition. Recognition is not a right guaranteed to all Unions registered under the Trade Unions Act. The Trade unions Act does not deal with recognition. It does not either require or prohibit the employer from giving recognition to unions registered under the Act.

13. The matter was taken by Railway Board to the Supreme Court. While dismissing the Special Leave to Appeal (Civil) 3716/2004 on 8.3.2004, the Supreme Court observed:

We see no reason to interfere with the decision of the High Court. In fact, the earlier SLP filed at the instance of another trade union had been dismissed by this Court. The High Court's reasoning for requirement of 30% membership exclusively for the membership of the Union is upheld. The High Court has correctly relied upon the decision of this Court in Food Corporation of India Staff Union Vs. Food Corporation of India and others, to hold that the method was a natural, rationale and viable alternative.

The SLP.s are, accordingly, dismissed.

14. A "Secret Ballot Committee" was appointed by the Ministry of Railways vide their order ERB-1/2007/23/13 dated 3.4.2007. The recommendations of the Committee were accepted by the Ministry of Railways on which railways prepared "Modalities for Conducting Secret Ballot for the Purpose of Granting Recognition to Registered Railway Trade Unions Representing All Categories of Group "C" & "D" Employees of Indian Railways". All existing trade unions of railways registered for atleast one year on 31.12.2006 were eligible to contest the elections. They were required to subscribe to the "code of discipline" and "code of conduct" during the election proceedings, which are provided in paragraphs 3 and 4 of the Modalities. The Modalities provided for norms for recognition, entitlement to vote, the preparation of voter's list, a nodal body to conduct and supervise secret ballot, publicity concerning secret ballot, tiling of nominations, scrutiny of nomination, withdrawal of nominations, election schedule, printing of ballot papers, polling booths, polling agents etc. in paragraphs 5 to 26 of the Modalities and the counting & declaration of final result in para 27. Paras 5 and 27 of these modalities relevant for the case are set out as follows:

5. Norms for recognition:

i) All unions getting 30% or more of the single vote of the total electorate shall be considered recognized.

ii) If only one union gets 30% or more of the single vote of the total electorate and some other union polling next maximum number of votes, gets at least 35% of the valid votes polled, then both these unions will get recognition. (This

assumes that 35% of votes polled will be less than 30% of the total electorate).

iii) If situations as stipulated in (i) and (ii) above don't arise, then the two unions getting maximum number of votes will be recognized provided each one individually gets more than 35% of the valid votes polled.

iv) In case there is no union fulfilling the conditions laid down in (i), (ii) and (iii) above, then union which gets maximum number of valid votes polled will be recognized provided it gets at least 20% of the valid votes polled. In this case only one union will get recognized.

v) If no union gets even 20% of valid votes polled, then no union will stand recognized.

27. Counting & Declaration affinal result:

All sealed covers received from Presiding Officers containing election report & Postal Ballots received will be opened by Returning Officer in the presence of Union representatives to prepare & compile final election result (Proforma at Annexure VI). The result will be declared by the General Manager of the Zonal Railway.

Any dispute regarding elections/counting of votes shall be raised on the day following the last day of the election/declaration of result. After expiry of this period, the result declared by the General Manager of the Zonal Railway will be treated as final.

15. A close reading of norms of recognition would show that all unions getting 30% or more of the single vote of the total electorate shall be considered recognised. If any one union gets more than 30% of the single vote of total electorate, and some other union polling next maximum number of votes, gets at least 35% of the valid votes polled, then both these unions get recognition with an assumption that 35% of the votes polled will be less than 30% of the total electorate. If both these conditions do not arise, then the two unions getting maximum number of votes will be recognised provided each one individually gets more than 35% of the valid votes polled. In case no union fulfils these conditions, then the union which gets maximum number of valid votes polled will be recognised provided it gets atleast 20% of the valid votes polled. The norms thus provide for recognition of at least one, and not more than three unions.

16. The modalities also provide for resolution of the disputes regarding election/counting of votes in para-27, to be raised on the day following the last day of the election/declaration of result. After expiry of this period, the result declared by the General Manager of the Zonal Railway will be treated as final.

17. In the present case, there were some disputes with regard to the election of the office bearers, the registration of which dated 28.6.2006, was challenged in the Court in Writ Petition No. 58185 of 2006. The writ petition was allowed on 23.10.2007. A Special Appeal was filed against the judgement. The Special

Appeal was allowed on 5.11.2007 in favour of the petitioner. In between the elections by "Secret Ballot-2007 in terms of the Modalities was announced by the Railway Board on 9.10.2007. The election schedule provided to issue a notification by 15.10.2007; tiling of nominations on 25.10.2007; scrutiny on 30.10.2007; display and issue of list of valid nominations received by 31.10.2007; withdrawal of nominations on 1.11.2007; display of final list of contesting unions on 2.11.2007; polling on 26/27/28th November 2007; grievance, if any, to be submitted by 29.11.2007; re-polling, if any, on 30.11.2007; re-polling on 1.12.2007 and counting of votes and declaration of final result on 3.12.2007.

18. It appears that influenced by the judgement of learned Single Judge by which the Writ Petition was allowed, and the elections of the office bearers were set aside, and a further direction was issued to hold afresh : elections, the returning officer provisionally accepted the nomination of the petitioner-union. It is stated that the Special Appeal was allowed on 6.11.2007 and that a copy of the judgement, obtained on 13.11.2007 was filed with the Returning Officer, N.E. Rly Zone Secret Ballot, Gorakhpur, with a representation to drop the word "provisional" from the ballot papers. The Deputy Labour Commissioner and the Deputy Registrar, Trade Unions also took note of the judgement in Special Appeal No. 1479/2007, North Eastern Railway Mazdoor Union Gorakhpur and Anr. v. The Registrar, Trade Union, Labour Commissioner's office, Kanpur and Ors., dated 6.11.2007 and wrote a letter on 21.11.2007, a copy of which was sent to the General Manager, North Eastern Railways, Gorakhpur on the same day on 21.11.2007. The request for dropping the word "provisional" made by Shri K.L. Gupta, General Secretary of the petitioner-union dated 15.11.2007 and the letter of the Deputy Registrar, Trade Unions dated 21.11.2007 was not acknowledged and that the word "provisional" was not deleted from the ballot papers. Out of the five registered Trade Unions, three were allowed to contest provisionally.

19. It is averred in paragraph-11 of the writ petition and has not been specifically denied in the counter affidavit of Shri P.K. Srivastava, Deputy Chief Personnel Officer, N.G. & R. North Eastern Railway, Gorakhpur that a news item was issued on 22.11.2007 and published in the newspapers as "Mahatvapoorana Soochna" (important information) on 22.11.2007, that the nomination of the petitioner union has been accepted provisionally. The word "provisionally" was exceptionally highlighted. Once again a news item was published in "Dainik Jagaran" on 2.11.2007 that the recognition of the petitioner union is provisional and that a rival union published an appeal to the bonafide voters highlighting that the nomination has been accepted provisionally.

20. It is alleged that on completion of the election process, and declaration of result on 3.12.2007, the petitioner union preferred objections on the next day on 4.12.2007, and brought out in detail the irregularities and illegalities committed during the elections and sought re-polling by fair means and the cancellation of result. The representation was rejected by the Deputy CPO/NG & OSD-N.E. Rly.

Secret Ballot for General Manager on 10.12.2007 on the ground:- "Your representation as such is an afterthought and is barred by time as per the modalities of Secret Ballot, hence the representation is not tenable." It was stated that under the Election Schedule, the representations were to be made for the grievances when the ballot papers were displayed on the notice board. No representation was made regarding the ballot paper.

21. In substance the Railways rejected the representation on the ground that the grievance with regard to any error in the ballot paper was to be made at that time i.e. on 29.11.2007, as per the election schedule, and that the representation made on 4.12.2007 was also barred by time. The reason, as to why it was barred by time, was not given.

22. The election results, have not been challenged. The results demonstrate that the petitioner union polled 14398 valid votes out of the total electorate 57642, which was 24.98% of the percentage of the total electorate, and 29.53 % of the percentage of valid votes cast. The "Purvottar Railway Shramik Sangh" polled 24119 votes, which is 41.84% of the total electorate and 49.42 % of the valid votes cast. The two other unions namely "N.F. Railway Men's Congress" polled only 2922 votes" which is less than 6% of the percentage of total electorate and total votes cast and the Purvottar Railway Karmchari Sangh" polled 6202 votes which is 10.76% of the total electorate and 2.72% of the valid votes cast. The "Rail Mazdoor Union" polled only 1118 votes, which is 01.94% of the total electorate and 02.29% of the total valid votes cast.

23. Learned Counsel for the petitioner contends that the judgement of the Court in Special Appeal No. 1479/2007 was submitted to the Returning Officer on 15.11.2007, before the polling dates. The information was also given by the Deputy Registrar, Trade Union on 21.11.2007, and thus the word "provisional" should have been deleted. He submits that the word "provisional" in the ballot papers as well as its prominent and unusual display by the Railways, misled the bonafide voters and has prejudiced the petitioner in the conduct of elections. The petitioner was not required to send any grievance on 29.11.2007, as the modalities provided for raising all the disputes regarding elections/counting on the day following the last day of elections/declaration of result. The representation was sent on 4.12.2007 (the next day of declaration of result) and was not barred by time.

24. Shri Govind Saran, learned Counsel appearing for the Railways would submit that the Railways accepted the nomination even after the writ petition regarding registration of the union was rejected. Since the Special Appeal was filed, the nomination was accepted provisionally. The nomination was also accepted provisionally in respect of Purvottar Railways Karmchari Sangh, and Rail Mazdoor Union. They did not raise any grievance. The Division Bench judgement was not served upon the Returning Officer, N.E. Rly Zone "Secret Ballot", and that in any case the inclusion of the word "provisional" in the ballot papers would not have prejudiced the petitioner at all, as it has ascertained membership. There was

sufficient time available to the petitioner to inform all his members about the acceptance of the nomination, and the fact that the Special Appeal was allowed. The representation raising disputes to the elections was sent on 4.12.2007, and was received on 5.12.2007, and thus it was barred by time.

25. On the day of filing nominations, the petitioner union was not eligible to contest the elections as it's registration was set aside by this Court in allowing the writ petition No. 58185 of 2000 against the constitution of the Central Committee of the Trade Union by the order of the Registrar, Trade Union dated 28.6.2006. The petitioner has not relied upon any interim order passed in the Special Appeal No. 1479 of 2007 which was allowed only on 5.11.2007, setting aside the judgement of learned Single Judge dated 23.10.2007. The notification for elections was issued on 15.10.2007. The provisional acceptance of the nomination by the Returning Officer as such was not illegal. The petitioner obtained the copy of the judgement dated 5.11.2007 of the Special Appeal on 13.11.2007, and alleges that it was presented by Shri K.L. Gupta, to the Returning Officer on 15.11.2007. The receipt of the letter is disputed by respondent No. 3. The petitioner then states that the letter of the Registrar, Trade Union dated 21.11.2007 also must have reached the Railways. A perusal of this letter would show that it was addressed to the petitioner union and a copy was sent to the General Manager, N.E. Railways Gorakhpur on 22.11.2007. The polling was scheduled for 26th, 27th and on 28.11.2007. The petitioner did not submit any grievance with regard to the ballot papers on 29.11.2007, and made the representation against the elections only on 4.12.2007.

26. The modalities do not provide the method and the manner of sending representations. The limitation prescribed for sending representation has not been challenged. When the modalities do not prescribe sending of the representation by post, it would not make the post office the agent of the addressee. The petitioner has not given any good and sufficient reason as to why he could not submit the representation, if it was prepared on 4.12.2007 by hand to the Deputy C.P.O./N.G. and O.S.N. Railway Secret Ballot.

27. The petitioner has not shown or given the reference of any prejudice, which may have been caused or misled the members of the union. The names or the number of the employees/members of the union, who may have been prejudiced by the mention of the word "provisional" either in the newspapers or in the ballot papers, have not been given either in the representation, which has to be treated as election petition or in the writ petition.

28. Ordinarily where the election results are challenged on the ground of misrepresentation or misleading information in the ballot papers and its publication in newspapers, the person challenging the elections has to prove the prejudice and the effect of such misleading advertisement on the ballot papers by leading oral evidence. The writ petition lacks pleadings of material particulars, with regard to the effect of the word "provisional" which may have caused to its members. There is no positive assertion in the pleadings and grounds taken in

the writ petition, that the words provisional" on ballot papers or advertisement in newspapers misled its members or that the bonafide voters of the petitioner were misguided by such advertisements and which led to the shortfall in the number of votes for seeking recognition.

29. The election petition must contain a concise statement of "material facts" and "particulars", on which the petitioner relies. All the material facts must be set out in the election petition, failing which it is liable to be dismissed. In *Virender Nath Gautam Vs. Satpal Singh and Others*, , the principle applicable to all election petitions was explained.

30. In this case the Trade Unions were not pitched against each other nor there was any contest for recognition of only one Trade Union. Still the principle of setting out "material facts" and "particulars" which affected the result was required to be set out in the representation, or at least in the writ petitions. There are no such "material facts" and "particulars" given in the representation dated 4.12.2007, or even in the writ petition.

31. The Modalities and the prescribed percentage to seek recognition has not been challenged. Out of 57642 votes, 14398 votes were secured by the petitioner-union. This was 24.98% of the total electorate and 29.53% of the valid votes cast. The petitioner was short of 5.2% in the percentage of single vote of the total electorate, and 5.47% in the number of valid votes polled to seek the minimum percentage of votes to seek recognition.

No other point was argued. The writ petition is dismissed.