

(2009) 06 BOM CK 0008

In the Bombay High Court

Case No : Writ Petition No. 2856 of 2008

Petroleum Employees Union

APPELLANT

Vs

Chief Labour Commissioner and Others

RESPONDENT

Date of Decision : 22-06-2009

Acts Referred:

Citation : (2009) 6 BomCR 383 : (2009) 122 FLR 1068 : (2009) 4 LLJ 745

Hon'ble Judges : Mohite R.S., J;Deshmukh D.K., J

Bench : Division Bench

Advocate : S.J. Deshmukh, Jayprakash Sawant and Ranjana Todankar, for the Appellant; J.P. Cama and S.A. Balwal, instructed by Vyas and Balwal for respondent Nos. 5 to 9 and C.U. Singh and Abhay Kulkarni, for the Respondent

Judgement

1. The petitioner-trade union by this petition challenges the process initiated for verification of the membership of the trade union operating in the establishment to find out which trade union commands support of the majority of the workers. The case of the petitioner-trade union in nutshell is that they had given their consent for carrying out process of verification of membership of trade union by secret ballot pursuant to the judgment of this Court in Writ Petition No. 1785 of 1997 dated 5th May, 1998 (Oil and Natural Gas Commission Karmachari Sanghatana v. Ministry of Petroleum) and as now by its judgment in the case Air India Employees Guild Vs. Air India Ltd. and Others, , the Full Bench of this Court has overruled the judgment of the Division Bench in Writ Petition No. 1785 of 1997 dated 5th May, 1998, now the process of verification of membership of the trade union by secret ballot system cannot be carried out. In our opinion, the petition cannot be entertained for various reasons. Firstly, the case of the petitioner that it had given its consent for verification of the membership of the trade union by system of secret ballot after the order dated 5th May, 1998 was made in Writ Petition No. 1785 of 1997, is false. Perusal of the minutes of the meeting held with the Presiding and the General secretaries of the recognised unions in Oil and Natural Gas Corporation dated 13th July, 1996 shows that the President of the petitioner Association participated in that meeting. The relevant

portion of the resolution No. 2 reads thus:

The method of recognition by secret ballot was agreed upon by all the recognized unions except representative of ONGC employees union, Tripura who were of the view that it may not be possible to conduct free and fair elections in view of the prevailing law and order situation at Agartala.

Then the resolution recites thus:

After detailed discussions, it was agreed as under:

(i)....

(ii) Verification of Trade unions would be done through secret ballot in accordance with the procedure issued by the Ministry of Labour, Government of India.

It is, thus, clear from this document that the consent was given by the petitioner-trade union for secret ballot system even before the Writ Petition No. 1785 of 1997 was filed in this Court. Perusal of the judgment in Writ Petition No. 1785 of 1997 shows that the petition was filed not by the petitioner-Union but by the respondent No. 10 Trade Union and the petitioner- Trade Union was respondent No. 6 in that petition claiming that the process of verification of the membership of the trade union should be decided by system of secret ballot. Strangely it appears that though the petitioner-trade union had given its consent in the year 1996 as it is evident from the Resolution quoted above, the petition was opposed by the petitioner-Union. The Division Bench, however, relying on the judgment of the Supreme Court in the case Food Corporation of India Staff Union Vs. Food Corporation of India and others, , upheld the contention of the trade Union which was petitioners in the petition and directed that the process of verification of membership should be carried out by the system of secret ballot. It is pertinent to be noted here that Oil and Natural Gas Commission had already adopted as a matter of policy the system of verification of membership of trade union by secret ballot. Perusal of the manual for recognition of trade union placed before us shows that there is clear statement made to that effect which reads as under:

The adoption of the process of secret ballot, for ascertaining the majority character of a Union before conferring/changing the recognition to a Union is now the policy of ONGC The guidelines issued by the Corporate IR in this connection in December, 1998, have also been incorporated in this chapter.

It is, thus, clear that the system of secret ballot has been adopted by ONGC as a matter of policy. In the petition, there is no challenge to the policy. In our opinion, unless the policy adopted by ONGC is challenged and an order is sought for setting aside that policy, the process of secret ballot initiated pursuant to the policy decision cannot be set aside.

2. So far as the reliance placed on the judgment of the Full Bench is concerned, in our opinion, merely because the Full Bench has said that the law laid down by

the Division Bench in the above referred judgment is overruled, will not take away the binding effect of the writ issued by the Division Bench. The judgment of the Division Bench will continue to bind the parties to the writ petition though the law on the basis of which that writ was issued has been subsequently found to be erroneous by the Full Bench. It is further to be noted here that the Full Bench in paragraph (6) of its judgment has held that the directions issued by the Supreme Court in the case Food Corporation of India referred to above, are not relevant because they are based on the consent of the parties, and therefore, according to the Full Bench, the judgment of the Supreme Court in the case Food Corporation of India does not lay down any law. What is to be seen here is that even according to the Full Bench if the system of secret ballot is introduced because of the consent of the trade Unions involved, then that system can go on, unless the policy decision which was taken by the Corporation on the basis of the consent given by the parties is set aside by the appropriate Court of Law. In the present case as noted above, the petitioner-Union had itself given its consent, in the year 1996 and also subsequently, for adoption of the secret ballot system and therefore, in our opinion, what is said by the Supreme Court in the judgment in the case Food Corporation of India referred to above will be relevant in this case and not that is said by the Full Bench in its judgment in the Air India Employees Guild referred to above. What is further pertinent to be noted is that the petitioner-Union was recognized as majority union by the employer pursuant to the secret ballot held in the year 2004 for a term of two years. That term of two years is over and therefore, the process of secret ballot was initiated again. The petitioner-Union filed this petition and obtained interim order as a result of which the process of secret ballot is not completed and the petitioner-Union continues to enjoy the status of recognized Union. In our opinion, this conduct of the petitioner-Union disentitles it to any relief at the hands of this Court in its extraordinary jurisdiction. If it was genuinely felt by the petitioner-Union that the system of secret ballot is invalid, it first should have given up its status as recognized union and then should have filed this petition. The conduct of the petitioner of enjoying the status of recognized union which is secured by it by following the same system and then challenging it and preventing further verification of membership, in our opinion, disentitles the petitioner to any relief. The petition, in our opinion, therefore, deserves to be rejected. It is accordingly rejected.

3. At this stage, a request is made that the process of holding the verification should be stayed. In our opinion, that will not be proper because the petitioner is enjoying the status of recognized Union though the term is over long back. The process has also been completed, only the ballots have to be opened now. The request is rejected.

Parties to act on the copy of this order duly authenticated by the Associate/Private Secretary of this Court.