(2003) 10 MAD CK 0184

Madras High Court

Case No: Writ Appeal No. 3168 of 2002

The Southern Railway Mazdoor Union		APPELLANT
	Vs	
The Railway Board and Others		RESPONDENT

Date of Decision: Oct. 17, 2003

Acts Referred:

- Constitution of India, 1950 - Article 14, 19, 19(1)(c)
- Trade Unions Act, 1926 - Section 10, 28, 6(ee)(iii), 9A

Hon'ble Judges: R. Jayasimha Babu, J; P.K. Misra, J

Bench: Division Bench

Advocate: R. Krishnamoorthy and Mr. R. Muthukumarasamy, assisted by Mr. A. Jenasenan, for the Appellant; V.T. Gopalan, A.S.G. for Mr. V.G. Suresh Kumar for Respondents 1 and 2, Mr. S. Sampath Kumar, assisted by M/s. Sampath Kumar Associates for Respondent 3, Mr. A. Thiagarajan for Respondent 4, Mr. A.L. Somayaji, for Mr. Sethuraman for Respondent 5, Mr. R. Gandhi, for Mr. R.G. Narendran for Respondent 6, Mr. Mohan Parasaran, for Mr. G.K. Muthukumar for Respondent 7 and Ms. R. Vaigai for Mr. K. EIango for Respondent 8, for the Respondent

Judgement

R. Jayasimha Babu, J.

The Indian Railways said to be the largest single employer in the country with about sixteen lakh employees, presently incurs a staggering annual expenditure of Rs. 24.03 crores on about 22,283 office bearers of the labour unions recognised by it at various levels in it''s nine Railway zones, There are two recognised unions at each level, with numerous office bearers all of whom are given free facilities of various kinds. The money value of facilities provided to them in the form of free passes (for many by first class) is Rs. 6.04 crores; the money value of special casual leave -Rs.12.23 crores; money value of free telephones - Rs. l .64 crores; money value of free accommodation - Rs. 3.87 crores; and the money value of TA/DA Rs. 21.70 lakh. With effect from 01.04.2003 the number of Railway Zones have been increased to

16. Recognition given to these unions is by reason of their having thirty per cent or more of the non gazetted employees as their members, that norm having been prescribed on 28.10.1985 pursuant to the recommendation made by the Railway Reforms Committee. Prior to 1985, the norm was 15 per cent as prescribed on 19.09.1961.Exclusivity of membership of that minimum percentage is embedded in the norm so prescribed.

2. Rules for recognition of associations of non-gazetted railway servants are set out in paragraphs 2510 to 2518 in Part B of Chapter XXV of the Indian Railway Establishment Manual. Conditions precedent to the recognition of a Union by a Railway administration are set out in Part C of that Chapter.

(b) Paragraph 2510 sets out, inter alia, that "Government is prepared to accord official recognition to associations of it''s 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."

(c) Paragraph 2512 provides that "Recognition will not ordinarily be granted or continued to any association unless it complies with the following conditions: -(i) it must consist of a distinct class of railway servants and must not be formed on the basis of any caste, tribe, or religious denomination or of any group within or section of such caste, tribe or religious denomination; (ii) all railway servants of the same class must be eligible for membership; (iii) it must be registered under the Trade Unions Act."

(d) "Government may" as provided in Paragraph 2513 "require the regular submission of copies of the Rules of any recognized association, of it''s annual accounts, and of it''s list of members."

(e) The Rules in parts ''B'' and ''C'' of Chapter XXV of the Railway Manual also provide for grant of leave, provision of passes and privileged ticket orders to railway servants, "for attending meetings or conducting the affairs of the union". The rules of the union are required to conform to those set out in Part C.

3. Of the two recognised unions at each level, one is affiliated to the All India Railway-men Federation formed in 1924 and recognised from the year 1930, and the other, the National Federation of Indian Railway-men formed in 1949. Though the two Federations had merged in 1952, they broke apart in 1957.These two federations in turn are affiliated to the Hind Mazdoor Sabha, and Indian National Trade Union Congress respectively. The recognized unions are entitled to participate in the permanent negotiating machinery set up by the Railways for dealing with service matters. This bilateral forum functions in three tiers. While Railway Board holds discussions separately with the two federations, the General Manager of the respective zones discuss matters again separately with the two recognized unions. The Divisional Branches of these Unions hold discussions separately with the

Divisional authorities.

4. The Bharatiya Railway Mazdoor Sangh formed in 1966 had in writ petition No. 1586 of 1986 filed in the Hon''ble Supreme Court sought a mandamus to the Union of India to recognise that union. On 25.01.1989 the Supreme Court directed the Union of India to consider the petitioner''s application for recognition in accordance with relevant Rules. The petitioner, thereafter having filed a contempt petition. The Union of India, in paragraph 6 of it''s counter affidavit had stated, inter alia, that, in the absence of list of members it would not be possible to verify - (i) whether the membership claimed is, in fact, established; (ii) whether there are errors and duplication in the claim of membership made by the respective unions; and (iii) whether the membership claimed is of non gazetted Railway servants.

5. On 07.08.1989, the Court directed the petitioner to "furnish the list as required under paragraph 6(i) to (iii) (of the Counter affidavit) with regard to the current list of members for the year 1988 in respect of members of branches. Upon the said particulars and information being furnished, the respondent shall consider the question of recognition within three weeks thereafter." Recognition however was not granted apparently because the requirement of paragraphs 6(i) to (iii) of the counter affidavit of the Union in the Contempt Petition were not satisfied. The Contempt Petition was finally closed on 25.09.1995 after recording the submission for the petitioner that it "...would resort to the remedy available for the adjudication of the dispute as an industrial dispute". No industrial dispute was however raised thereafter by that union with regard to recognition.

6. As of now, even as it was in 1949, there are only two recognised unions, each of which has numerous office bearers at local, regional, zonal and national levels. As set out in the affidavit filed on behalf of the Railway Board in these proceedings,

...the Railway is maintaining very good Industrial relations by optimising worker participation in the management even in day to day functioning of the Railways..." and that "all major policies relating to staff matters including major policy decision relating to transfer, posting, promotion, etc., are decided in consultation with unions.

7. The norm of thirty per cent membership as precondition for recognition was first set out by the Railway Board in it''s letter dated 28.10.1985 addressed to the General Managers of all Railway zones. That letter reads as under:

Sub : Condition for recognition of Unions.

Vide Recommendation No. 80 of Part IX of the Report of Railway Reforms Committee, the norms for recognition of Trade Unions are mentioned as under:-

(a) There should be a stipulation that Union/Association represents all classes of Railway employees; and

(b) The Union should have a membership of at least 30% of the non gazetted employees they seek to represent.

2. The above recommendation of R.R.C. has been accepted by Railway Board and necessary action has been taken accordingly.

3. As regards item (a) it may be mentioned that Para 3612 of the Indian Railways Establishment Manual, which inter-alia lays down the conditions precedent to the recognition of a Union, is clear and covers this part of the recommendation. Regarding (b), in Railway Board''s letter No. E(L)61/UTl-95/l dated 19.06.61, it was laid down that minimum percentage of membership for granting recognition to Unions will be 15%. The same should now be modified to 30% as recommended by R.R.C.

4. 1t may, however, please be noted that on the basis of this letter, Railway Administration should not grant recognition to any Union which has not so far been accorded recognition or withdraw recognition from any recognized Union without the prior approval of Railway Board.

8. The norm so prescribed was at all times, and rightly, understood by the Railway Board as also the Unions, as requiring the Union seeking recognition to have at least thirty per cent of the workmen as it''s exclusive members. The stand rightly taken by the Railway Board before the Supreme Court in the Contempt proceedings in writ petition No. 1556 of 1986 was that there should be no ''duplication'' in the membership claimed by the respective unions.

9. Moreover the norm of thirty per cent was fixed pursuant to the recommendation made by the Railway Reforms Committee which clearly did not, by recommending doubling the percentage of 15 earlier followed by the Railways, intend to open the gates for recognition of an unlimited number of unions. The clear object of the recommendation was to restrict the number of recognised unions to three by making it mandatory for each recognised union to have at least thirty per cent of the workers as it''s exclusive members. The Committee did not recommend acceptance of duplicate or multiple membership, nor did the Railway Board by accepting and implementing that recommendation accept duplication of membership among the unions seeking recognition, as is clear from the stand rightly taken by it before Supreme Court in 1989.

10. On 26.06.2002, the Railway Board issued an order addressed to all the General Managers of Indian Railways the cause for the present proceedings. It reads as under:

Sub : Request by Bhartiya Railway Mazdoor Sangh and others for grant of recognition.

The Railways are aware that Bhartiya Railway Mazdoor Sangh and others have been requesting for recognition for a long time. The rules for recognition are contained in

Part ''B'' and ''C'' of Chapter XXV of IREM, Vol.11 1990.

On application by the affiliates of Bhartiya Railway Mazdoor Sangh and others to your Railway for grant of recognition, you shall consider them on the basis of above and that the "Union should have a membership of at least 30% of the non-gazetted employees, they seek to represent". The membership strength of 30% of the total non gazetted employees of the respective zones will be decided on the basis of the Annual Return Forms for the latest year submitted by the zonal unions to the respective Registrar of Trade Unions and as certified/accepted by him.

This supersedes Railway Board''s letter No. E(LR)I/83/NMI-23 dated 28.10.1985.

11. The object of the letter clearly is to extend recognition to the unsuccessful petitioner before the Supreme Court, the Bhartiya Railway Mazdoor Sangh, ''and others'', by taking advantage of the absence of any provision in the Trade Unions Act, 1926, the second oldest legislation concerning labour in India, prohibiting duplication of membership among trade unions, and mandating that the membership figures mentioned in those returns would be the sole basis for grant of recognition.

12. The effect of this deceptively innocuous letter of 26.06.2002 is to permit and accept multiple membership, and give recognition to an unlimited number of unions to represent the same workmen, and to do away with the requirement that was embedded in the earlier norms that the membership of at least thirty per cent of the work force was to be exclusive to that union. While under the norm as fixed earlier, the maximum number of recognised unions could only be three, as each union had to have the exclusive support of thirty per cent of the workmen, now there can be hypothetically as many recognised unions as there are workmen, and every workman can, not only be an office bearer of one union, but also be office bearer of several unions.

13. This startling and far reaching change is sought to be effected when, even according to the Railway Board industrial relations in the Railways has been, and is very satisfactory, and there is no need whatever to accord recognition to an unlimited number of other unions which can only be a source of disharmony and friction and has the potential for disrupting the industrial peace, on account of the inevitable competition among the unions to project themselves as the most ardent and effective champion of the workmen. No attention appears to have been paid to the fact that employer would have to negotiate with each one of those unions, resulting in consumption of enormous time in such negotiation, and confusion that will arise in having to discuss the same matter with numerous unions. All this in the background of the recommendation made by the Railway Convention Committee in the late nineteen nineties recommending reconsideration of norms for recognition to achieve the principle of one union for one industry.

14. The financial implications are mind boggling. 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 often recognised unions would be Rs. 120 crores. If the workmen were among themselves to agree to help each other so that each one can enjoy the privilege extended by the employer to office bearers of unions, the number of additional unions that may in future claim recognition would be the number of non-gazetted workmen divided by the permissible number of office bearers for an union. In the Southern Railway, we are informed, there are about 132,000 non-gazetted workmen. If that figure is divided by 16 a rough average of the number of office bearers, at each level, the number of unions would be over 8000. Assuming that that proportion would be the same in all the zones, at Rs. 12.00 crores per each recognised union at all levels the expenditure on the office bearers of 8000 unions would be Rs. 96,000 crores.

15. Having regard to statutory minimum subscription of Rs. 12/- per annum by a member prescribed under S. 6(ee)(iii) of the Trade Unions Act, 1926, even if it is assumed that a workman may not be willing to spend more than Rs. 200/- per month on union membership fee, there could still be 200 unions eligible to obtain recognition in terms of the impugned order of 26.06.2003. Expenditure on the office bearers of that number of unions at the current rate would be Rs. 2400 crores.

16. There are already two more unions in addition to the Bhartiya Mazdoor Sangh waiting to receive recognition, under this new dispensation Grant of recognition to all of them would immediately raise the expenditure on the office bearers of the two existing and three new unions to Rs. 60 crores per annum.

17. Apparently, no attention had been paid to these aspects when the letter of 26.06.2002 was issued. More surprising is the fact that even after attention had been drawn to these aspects by our order of 24.02.2003, the Railway Board has chosen to reiterate the contents of that letter.

18. The Railway Board is fully aware of the fact that the membership declared by the two existing unions together with the membership claimed by the three unions seeking recognition from the Southern Railway is much more than twice the number actually employed. While there are about 132,000 non gazetted employees, the total membership of these five unions as per Annual Returns filed by them before the Registrar of Trade Unions exceed 300,000.

19. The Railway Board has inexplicably preferred to turn a blind eye to these glaring facts and has sought to justify the impugned letter by merely asserting that it had even in the past relied on the Annual Returns while granting recognition to the petitioner union and the fifth respondent union - the two unions which were recognised by the Southern Railways in the year 1965 -ignoring the fact that there was no issue regarding duplication or multiple membership in those two unions at the time recognition was given, as the total membership of the two unions together

in 1965 was less than the total number of workmen employed.

20. We have heard learned senior counsels Mr. R. Krishnamurthy, Mr. R. Gandhi, Mr. A.L. Somayaji, and Mr. Mohan Parasaran, who appeared for the appellant, one of the two unions recognised by the Southern Railways affiliated to AIFR; the sixth respondent, the other recognised union in the Southern Railway affiliated to NFIR; the fifth respondent, the AIFR; and the seventh respondent, the NFIR, respectively. All of them sought the quashing of the order of 26.06.2002.

21. Mr. V.T. Gopalan, the learned Additional Solicitor General, Mr. Sampath Kumar, learned senior counsel, Mr. Thiagarajan, and Ms. Vaigai, who appeared for respondents 1 and 2, the Union of India and the Railway Board; respondent 3, respondent 4, and respondent 8, respectively sought to sustain that order. Respondent 3 is the Dakshin Railway Karmik Sangh affiliated to the Bhartiya Railway Mazdoor Sabha, Respondent 4, the Railway Mazdoor union, affiliated to Hind Mazdoor Kissan Panchayat, and Respondent 8, the Dakshin Railway Employees Unions affiliated to the Centre of Indian Trade Unions. These three unions are waiting for recognition on the strength of the membership figures shown in their latest annual returns filed before the Registrar of Trade Unions.

22. Mr. Gopalan submitted that the issue here was one of policy, and therefore, the Court should not to interfere. It was his submission that the norm of 30 per cent of the non gazetted staff being members of the Union seeking recognition remains unaltered and that the mode of ascertainment of the actual number of members has only been clarified and specified in the impugned letter. It was also his submission that reliance placed on the annual returns filed before a statutory authority was not in any way arbitrary or irrational and that in fact such returns had been the basis for determining the eligibility of the presently recognised unions. Counsel also submitted that any other mode of ascertainment/verification such as secret ballot or check off system would be time consuming, expensive, and would lead to friction and labour unrest.

23. By merely characterising an administrative decision as a policy decision, such decision cannot be immunised from judicial review. Where the decision, ex facie, is grossly arbitrary and irrational, such a decision cannot be sustained on the sole ground that it was within the scope of the discretion vested in the decision making authority. The position would be the same in respect of decisions which are superficially innocuous, but in substance and reality arbitrary and irrational.

24. As observed by Lord Diplock in the case of Council of Civil Service Unions vs. Minister/or Civil Service (1985) 1 AC 374, irrationality

...applies to a decision which is so outrageous in its defiance of logic or of accepted morality standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is question that judges by their training and experience should be well

equipped to answer, or else there would be something badly wrong with our judicial system.

25. In the case of Associated Provincial Picture Houses Ltd vs. Wednesbury Corporation, [1948] 1 KB 223, it was observed by Lord Greene, inter alia, that:

It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably".

26. The principle was summarized by Lord Greene thus:

The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account the matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters they should take into account" and that the Court-could also interfere in cases where the authority while keeping within four corners of the matters which they ought to consider have nevertheless...come to a conclusion so unreasonable that no reasonable authority could ever have come to it.

27. The elucidation of what is ''irrational'' and what is ''unreasonable'', made by the English Courts in the aforementioned decisions was approved by the Supreme Court in the case of Tata Cellular Vs. Union of India, a decision rendered by a three Judge Bench. The Court at paragraph 89 of the judgment also observed,

The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the Court''s ability to quash an administrative action on merits. These restraints bear the hallmark of judicial control over administrative action.

28. In the case of Krishnan Kakkanth Vs. Government of Kerala and ohters, a decision rendered by a two Judge Bench, the Court at paragraph 36 of the judgment observed,

unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down." That a policy which "...is arbitrary or violative of any constitutional, statutory or any other provision of law" may be interfered with," was reiterated by another two Judge Bench in the case of State of Punjab and Others Vs. Ram Lubhaya Bagga

Etc. Etc., . Yet another two Judge Bench in the case of Punjab Communications Ltd. Vs. Union of India and Others, after reviewing the decisions of English and Indian Courts on legitimate expectation; held at paragraph 42 that".... the judgment whether public interest overrides the substantial legitimate expectation of individuals will be for the decision maker who has made the change of policy, and the Courts will intervene in that decision only if they are satisfied that the decision is irrational or perverse.

29. In the case of M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others, a three Judge Bench of the Court at paragraph 18 observed that,

It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness, etc. Indeed arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional.

30. The Courts have refrained from interfering with decisions affecting the economy, recognising that "...economic expediencies lack adjective disposition and unless the economic decision based on economic expediencies is demonstrated to be so violative of constitutional or legal limits on power, or so abhorrent to reason, the Courts would decline to interfere", and that "in matters relating to economic issues, the Government has while taking a decision, right to "trial and error", "as long as both trial and error are bona fide and within the limits of authority", as observed by a three Judge Bench of the Court, in the case of BALCO Employees Union (Regd.) Vs. Union of India and Others,

31. 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 Vs. National Industrial Tribunal and Others, . The Court observed at paragraph 22 of the judgment

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 cl.(c) of CI. (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.

32. 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 Ghosh vs. Joseph, 1962-II LLJ 615, 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.

33. 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.

34. 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 judgment in the case of Sarabjeet Singh and Others Vs. State of Uttar Pradesh, 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 -(!) 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.

35. Verification of the strength of membership of rival unions seeking recognition has been beset with problems. Under the Code of Discipline ratified by all Central Employees and Workers Organisation at the 16th Indian Labour Conference held in 1958, an Implementation Machinery was set up. That code of Discipline includes provisions for Recognition of Unions in Chapter V of the Code. It is provided therein that it is the responsibility of ''implementation Units'' to ensure that recognition is granted to unions by managements wherever they satisfy the prescribed criteria. The criteria are set out in Annexure I to the Code. One of the criteria is that membership of the Union should cover at least fifteen per cent of the workers in the establishment concerned.

36. Unions and employers governed by the Code of Discipline are required to follow the Procedure for verification of membership for purpose of recognition set out in Appendix IV to the Code. The Chief Labour Officer at the Centre or the State Labour Commissioner is to carry out such verification at the request of the Implementation Machinery/officer. Unions seeking recognition are required to produce their lists of members and other records, after which verification is carried out. The Railways has not subscribed to the Code of Discipline.

37. Under the Central Civil Service (Recognition of Service Association) Rules, 1993. which applies to all Service associations of Central Government employees including civilian employees in defence services, but not to industrial employees of Ministry of Railways and workers employed in Defence Installations of Ministry of Defence, as provided in Rule 5(d)(i) the association seeking recognition should represent at least 35 per cent of the employees. A second association may however be recognised, if it has the second highest membership with not less than 15 per cent of the employees as it''s members. Rule 7 provides that verification of membership for purpose of recognition as a Service Association shall be done by the ''check off system in pay rolls''. Para 2.4 of the clarification issued in the O.M. dated 31.01.1994 provides that under the check off system the Government Servant may subscribe to only one association."

38. The Check Off system under which the employer at the request of individual employee deducts from his salary or wages his subscription to the union of which he is a member, is an easy system of verifying the membership of the union, if all workers avail of it. Though in the course of hearing of this appeal we had suggested to the Railway Board and to the Union that they consider the adoption of that system, the Railway Board as also one of the national federation of it''s workmen, and several other unions were not in favour of adopting that system.

39. The Courts have on occasions directed the holding of secret ballot where several unions claimed the right to be the sole bargaining agent. In the case of Food Corporation of India Staff Union Vs. Food Corporation of India and others, based on the consent given by the employer as also the unions to adopt the secret ballot system, the three Judge Bench directed that 29 norms and procedural directions given by it should be followed in holding the secret ballot which was directed to be held under the over all supervision of the Chief Labour Commissioner.

40. The Court, in that case, in the course of it''s order observed, "The check off system which once prevailed in this domain has lost it''s appeal, and so, efforts are on to find out which system can foot the bill. The method of secret ballot is being gradually accepted." The Railway Board however has refused to accept that method on the ground that it cannot afford the cost of organising and holding such a ballot. Though the appellant union and the federation to which it is affiliated are willing to adopt that method, the non recognised unions are willing to consider that method only if recognition is first withdrawn for the presently recognised unions to create a

level playing field. The other recognised federation is not in favour of holding a secret ballot.

41. Though annual returns always have had to be filed by registered unions under the Trade Unions Act, it has never been regarded by any of the responsible bodies such as the Indian Labour Conference, the National Commission on Labour or the Government of India as a reliable basis for ascertaining the genuine and effective membership of the unions. Such lack of faith in the returns filed under that Act, as a reliable basis for recognition, is not only because it is widely accepted that the membership figures are exaggerated, but also because they often include persons who are also members of other unions. The contents of the latest annual return produced in these proceedings by one of the unions illustrates this. In the Returns filed for the year 2002. 8th respondent Union has reported that it had 12947 members at the commencement, but before the year ended it enrolled 28621 new members and claims a membership of 41568 at the end of the year, a figure which enables it to claim that it has thirty per cent of the workmen as it''s members, and obtain recognition on that basis.

42. The Trade Unions Act does not mandate that the membership figures reported in the Returns be verified by the Registrar. Section 28 of the Act which deals with Returns, requires the submission of audited statement of all receipts and expenditure and a statement of assets and liabilities, prepared in ''such form'' and comprising of ''such particulars as may be prescribed''. Together with that statement a statement showing changes in office bearers and a copy of the Rules of the Union corrected upto date are to be submitted. Regulation 12 of the Central Trade Union Regulations prescribes the form of the Annual Return which is Form ''D". That form requires the reporting of "Number of members on books at the beginning of the year'', ''Number of members admitted during the year (add)'', ''Number of members who left during the year (deduct)'', and ''total number on books at the end of the year''. The number of ''males'', ''females'' and the ''number of members contributing to the political fund are also to be reported.

43. The information so required to be furnished is only for the purpose of assessing the correctness of the figures of income and expenditure and for assuring the Registrar that the number of members has not fallen below the statutory minimum for retaining the registration of the union. That minimum was only seven, till the Act was amended by the Trade Unions (Amendment) Act 2001. The minimum membership now required is ''ten per cent or one hundred of the workmen, whichever is less engaged or employed in the establishment or industry with which it is connected'' subject to a minimum of seven. The newly introduced S.9A lays down that minimum requirement. The newly introduced Clause (c) of Section 10 provides for cancellation of registration where the union ceases to have the prescribed'' minimum number as it''s members.

44. Verification of the membership figures is wholly unnecessary for the purposes of the. Act and is almost never done except perhaps, in the small number of cases where it is suspected that the union has ceased to have the statutorily prescribed minimum number. The membership figures, the additions and losses, during the year, and the break up by sex is more for statistical purposes, and for keeping a check on incorrect financial reporting.

45. While the Railway Board certainly has the discretion to adopt a rational and non arbitrary method for the purpose of ascertaining the strength of the Unions to decide its representative character for granting recognition to that Union, the method chosen, if found to be one which instead of ensuring the identification of the truly representative union, only opens the flood gates for an unlimited number of unions to obtain the status of recognised unions, and results in the multiplication several fold the expenditure on the office bearers at the rate of Rs. 12.00 crores for each recognised union, such a policy will have to be regarded as arbitrary, irrational, and perverse, and also against the public interest.

46. The Railway Board, despite the Pandora''s box being opened 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 as 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.

47. 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 it''s letter of 26.06.2002 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 un-limited 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 it''s members, to three, which is the maximum number of unions that can be recognised on the basis that each such union has as it''s members at least thirty per cent of the non gazetted work force.

48. 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.

49. 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.

50. 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 it''s 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 i 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.

51. 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 it''s exclusive members thirty percent of the non gazetted work force.

52. The fact that the Trade Unions Act does not prohibit simultaneous membership in an unlimited number of unions 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.

53. If the membership figures filed before the Registrar of Trade Unions is verified by the employer or an outside neutral body, such as the Chief Labour Commissioner and the duplication of membership among the Unions weeded out, there can be room for recognising only one more union, as it is nobody''s case that the unions presently recognised do not have thirty per cent of the non-gazetted workmen as

their exclusive members. In case recognition is given to a third union the additional recurring expenditure to the Railways, at the current rate will be Rs. 12 crores.

54. The number of office bearers of recognised unions eligible for special casual leave, free travel and other facilities obviously requires to be considerably scaled down and a sensible ceiling placed on the monetary value of facilities provided to those office bearers. The Railways as a commercial enterprise using public funds, cannot be profligate.

55. The employer here is not a private employer free to make any policy, however, irrational, and regardless of the expense involved. No private employer would, in fact, expend monies on the office bearers of it''s recognised unions on this scale done by the Railways. The Railways are owned and operated by the Union of India. It''s budget is to be passed by Parliament. The monies expended by it are public funds. Though the employees of the Railways are industrial employees and to a large extent the Railways have to operate on commercial lines, the Railway Board is very much required, and enjoined by Article 14 to act reasonably, non arbitrarily and rationally. The Railway Board while it has discretion to make policy, cannot act irrationally and arbitrarily, undermine the very object of recognition, and expose the Railways to wholly uncalled for expenditure of tens, if not hundreds of crores of rupees. Such irrational and arbitrary action is wholly unsustainable. The writ appeal is allowed. The order under appeal as also the order impugned in the writ petition are set aside. WAMPs. No. 2077 and 2078 of 2003 are closed.