

Union of India and Another

Vs

M. T. S. S. D. Workers' Union and Others

Civil Appeal No. 341 of 1988

(G.L. Oza, B.C. Ray JJ)

27.01.1988

JUDGMENT

OZA, J. –

1. Leave granted. This appeal has been filed by the Union of India against a judgment passed by the High Court of Bombay in Misc. Petition No. 1946/84 decided on April 2, 1986. A writ petition before the High Court was filed by M.T.S.S.D. Workers' Union, Pune and two of the employees in the establishment in which this union is functioning. In the writ petition an order was sought quashing the decision of the authorities concerned of the petitioner who by their order dated January 31, 1984 informed the union about the scheme of the election to the Works Committee on the basis of the division indifferent constituencies. This order of the Commandant was conveyed to the respondent union. These Works Committees were to be constituted for the period 1984-86.
2. The question that was considered by the High Court was as to whether such a distribution was permissible under the Rules framed under Industrial Disputes Act.
3. The Bombay High Court by the impugned judgment came to the conclusion that such a distribution of constituencies is not permissible in view of the scheme of the Rules especially Rules 39, 41, 42 and 43 of the Central Rules framed under the Industrial Disputes Act.
4. Learned counsel appearing for the appellants contended that Rule 39 when it talks of representation to the various categories and groups and classes of workmen it contemplates that such constituencies be divided so that various sections, groups and categories of workers skilled, unskilled, clerical and otherwise may get appropriate representation. Learned counsel also relied on the proviso to Rule 43 to justify the division of the constituencies which was done by the impugned order which was set aside by the High Court of Bombay. Learned counsel for the respondent on the other hand contended that the Works Committees are expected to go into day to day problems and they are expected to be so constituted that they bring harmony and better functioning of the industry and it is for this purpose. According to the learned counsel Rule 42 contemplates only division in two constituencies that is those who are not members of the registered trade union and those who are not members of the registered trade union and even while providing for such a distribution in Rule 42 it has been further provided that where more than half the workers belong to one registered trade union then there is no need for any division of constituencies and election will only be by general vote of the workers in the industry. It was contended by learned counsel that this scheme of these rules contemplates that where there is a union representing the majority of workers there is no occasion for any distribution of constituencies so that the union and the management with the help of the Works Committee may resolve day to day problems and the industry may run smoothly in the

interest of production and industrial peace. He, therefore, contended that the order passed by the Bombay High Court in the scheme of the Rules is justified.

5. The constitution of the Works Committees has been provided for in Section 3 of the Industrial Disputes Act, 1947 which reads as under :

3. Works Committee. - (1) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months the appropriate government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so however that the number of representatives of workman on the Committee shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926).

(2) It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

6. It is clear from the language used in this section that the representatives of workmen shall be chosen in the prescribed manner and it shall be so done in consultation with their trade union if there is any registered under the Indian Trade Unions Act.

7. It is because of this that the Rules have prescribed the manner in which the Works Committees will be constituted. In Chapter 7 of the Rules framed under Industrial Disputes (Central) Rules, 1957 it has been provided for a constitution of the Works Committee. Rule 39 on which much emphasis was laid by learned counsel for the appellants reads :

Number of members. - The number of members constituting the Committee shall be fixed so as to afford representation to the various categories, groups and class of workmen engaged in, and to the sections, shops or departments of the establishment :

Provided that the total number of members shall not exceed twenty :

Provided further that the number of representatives of the workmen shall not be less than the number of representatives of the employer.

8. This rule talks of the number of members to constitute a Works Committee and it has been provided that the number shall be so fixed keeping in view that representation could be made in the Committee of workers engaged in different sections, shops, departments of the establishment. It was contended by learned counsel for the appellant that it was because of this that the management in this industry chose to distribute the constituencies in such a manner that there may be representatives in the Works Committee of different sections and departments of the industry. But it is clear that Rule 39 does not talk of any distribution of constituencies.

9. The relevant rule which provides for group of workmen's representatives is Rule 42 but Rule 41 contemplates consultation with the trade unions and where there is a registered trade union the

management is expected to ask the registered trade union to give information as to how many of the workmen are members of the union and how their membership is distributed among the sections, shops and departments of the establishment. Rule 41 reads as under :

Consultation with trade unions. - (1) Where any workmen of an establishment are members of a registered trade union the employer shall ask the union to inform him in writing -

(a) how many of the workmen are members of the union; and

(b) how their membership is distributed among the sections, shops or departments of the establishment.

(2) Where an employer has reason to believe that the information furnished to him under sub-rule (1) by any trade union is false, he may, after informing the union, refer the matter to the Assistant Labour Commissioner (Central) concerned for his decision; and the Assistant Labour Commissioner (Central), after hearing the parties, shall decide the matter and his decision shall be final.

10. Rule 42 reads thus :

Group of workmen's representatives. - On receipt of the information called for under Rule 41, the employer shall provide for the election of workmen's representative on the Committee in two groups -

(1) those to be elected by the workmen of the establishment who are members of the registered trade union or unions, and

(2) those to be elected by the workmen of the establishment who are not members of the registered trade union or unions,

bearing the same proportion to each other as the union members in the establishment bear to the non-members :

Provided that where more than half of the workmen are members of the union or any one of the unions, no such division shall be made :

Provided further that where a registered trade union neglects or fails to furnish the information called for under sub-rule (1) of Rule 41 within one month of the date of the notice requiring it to furnish such information such union shall for the purpose of this rule be treated as if it did not exist :

Provided further that where any reference has been made by the employer under sub-rule (2) of Rule 41, the election shall be held on receipt of the decision of Assistant Labour Commissioner (Central)

This rule clearly provides that the workers' representatives in the Committee will be in two groups : (1) those who are elected by the workmen who are members of the registered trade union or unions and (2) others those who will be elected by the workmen of the establishment who are not members of the registered trade union or unions and it is further provided that this number would bear the

same proportion to each other as the union members in the establishment bear to the non-members. That clearly shows that if in an industry there is or are registered trade unions and they have their membership as the management will know under the scheme of Section 41, the management will fix the number of seats in the Works Committee to be elected by the members of the union and by those who are not members of the union and the ratio between the members representing the union members and the members representing those who are not union members will be the same as membership of the union vis-a-vis non-members in the establishment.

11. There is yet another proviso which provides that where more than half the workmen are members of the union or any one of the unions no such division will be made. This clearly goes to show that where in an industry or an establishment the majority of the workers are in one union the distribution as provided in Rule 42 will not be necessary, it will only be one constituency. This scheme of Rule 42 read with this proviso clearly goes to show that where there is any registered trade union representing the majority of workers (more than 50 per cent) the question of distribution of constituencies does not arise. Learned counsel for the appellant also contended that proviso to Rule 43 contemplates division of the constituencies into various sheds (sic shops), departments and sections as was done by the management which was quashed by the High Court. Rule 43 reads as under :

43. Electoral constituencies. - Where under Rule 42 the workmen's representatives are to be elected in two groups, the workmen entitled to vote shall be divided into two electoral constituencies, the one consisting of those who are members of a registered trade union and the other of those who are not :

Provided that the employer may, if he thinks fit, subdivide the electoral constituency or constituencies, as the case may be and direct that workmen shall vote in either by groups, sections, shops or departments.

This rule starts with a situation where under Rule 42 the workmen's representatives are to be elected in two groups and where such a situation exists. The proviso further provides that if the employer thinks fit he may sub-divide the electoral constituencies in a manner so that the workers may vote either by groups or by sections or by departments. But it is clear from the language of this rule that this sub-division of constituencies could only be done if Rule 43 comes into operation. Admittedly in the present case in this industry the respondent trade union represents the majority of the workers that it has more than 50 per cent as its members and the occasion for distribution of the Works Committee into two constituencies as contemplated in Rule 42 does not arise and if it is not so then Rule 43 does not come into operation at all as Rule 43 itself clearly states that this rule only comes into operation "where under Rule 42 the workers' representatives are to be elected in two groups". It is therefore clear that this proviso to Rule 43 is not an independent substantive provision and therefore on this basis the contention advanced by learned counsel for the appellants is of no substance.

12. It is therefore clear that the scheme of these Rules for constitution of Works Committees clearly provide : (a) where there is a registered trade union having more than 50 per cent membership of the workers in that establishment the total number of members of the Works Committee will be elected without distribution of any constituencies; (b) if in an industry no trade union registered under the Trade Unions Act represents more than 50 per cent of the members then only the election will be held in two constituencies, one from the members of the registered trade union or unions and the other from non-members of the trade unions and it is only in this contingency it is further provided

that if the employer thinks proper he may further sub-divide the constituency into department, section or shed (sic shop). This clearly indicates that there may be a situation in a particular establishment where some section may have no membership of any trade union at all whereas in other sections there may be membership of trade unions then if under Rule 42 it has to divide into two constituencies that is members of the registered trade union and non-members, it may further sub-divide in order to provide for representation to any section of workmen who have no representative in trade union at all. It is therefore clear that when there is a registered trade union in an establishment having more than 50 per cent membership this exercise under Rule 43 is futile and is not called for as in this case as admittedly the respondent union's membership is more than 50 per cent. The distribution of constituencies under Rule 42 is not contemplated and therefore there is no occasion for Rule 43 or proviso therein to come into operation. In this view of the matter, in our opinion, the judgment of the High Court is correct and we see no reason to interfere with it. The appeal is therefore dismissed. In the circumstances of the case, parties are directed to bear their own costs.

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