CHAPTER XXV
(INDIAN RAILWAY ESTABLISHMENT MANUAL – VOL.II (1990 EDITION)
RULES FOR THE RECOGNITION OF SERVICE ASSOCIATIONS OF RAILWAY SERVANTS.

PART – A

Rules for the recognition of service associations of gazetted railway servants.

2501. Government is prepared to accord official recognition to associations of its gazetted railway servants which comply with the conditions set out below.

2502. The association must ordinarily consist of a distinct class of Gazetted 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.

i. Every gazetted Railway servant of the same class must be eligible for membership of the association.

ii. No persons who are not gazetted railway servants of the class concerned shall be elected as members or office bearers of the Association.

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

Provided that-

(a) No representation or deputation will be received, except in connection with a matter which is, or raises questions which are, of common interest to the class represented by the association; and

(b) Nothing in these instructions affects the discretion of the President, the Railway Board or any Officer of Government to receive or not to receive a deputation from any association.

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the gazetted railway servants to communicate their needs to Government or to Government Officers, and it may be withdrawn by Government if an association adopts other methods of ventilating those needs.

v. Government may require the regular submission, for its information, of copies of the rules of the association and the annual statement of its accounts and of lists of its members.

vi. Government may specify the channel through which representations from the association shall be submitted and the authority by whom deputations may be received.
vii. The officer who is empowered to grant leave to a gazetted railway servant will, so far as is possible, grant casual leave to a gazetted railway servant who is a representative of a recognized association to attend duly constituted meetings of the association. The grant of such leave will be subject to the exigencies of the service, of which the officer in question shall be the sole judge.

PART – B

Rules for the recognition of associations of non-gazetted railway servants

2510. Government is prepared to accord official recognition to associations of its industrial employees. The grant and continuance of recognition rests in the discretion of Government, but recognition when granted will not be withdrawn without due cause and without giving an opportunity, to the association to show cause against such withdrawal.

NOTE-The term “industrial employees” includes railway servants.

2511. Notwithstanding anything contained in the rules relating to the submission of petitions by railway servants, representations from recognized associations whether made orally by deputation, or presented in writing may be received by Government officers, subject to the observance of Rule 2506 and to such further restrictions as may be imposed by a department of Government in respect of
representations which raise no question of common interest to the class represented by the association.

2512. 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 Indian Trade Unions Act.

Note- For the purpose of condition (i) above, gazetted and non-gazetted ranks are considered separate and distinct classes and as such it is not permissible for a gazetted railway servant to join an Association of the non-gazetted railway servants, i.e., a Railway Union. When a non-gazetted rank railway servant is promoted to gazetted either in an officiating or permanent capacity he should as a rule resign his membership of the Union to which he belonged while in non-gazetted service. If, however, the officer concerned satisfies the General Manager or the Chief Administrative Officer, as the case may be, that by such resignation he will lose financially or otherwise under any beneficent scheme organized by the unions concerned, such as death, accident insurance, etc., he may be permitted to continue as member but not as office bearer or
representative of the Union. The responsibility for satisfying the General Manager or the Chief Administrative Office in this respect will rest with the officer concerned.

2513. Government may require the regular submission of copies of the rules of any recognized association, of its annual accounts and of its list of members.

2514. No recognized association shall maintain a political fund except with the general or special sanction of Government, and subject to such conditions as Government may impose.

2515. Government may specify the channel through which representations from recognized associations shall be submitted and the authority by whom deputations may be received.

2516. The officer who is empowered to grant leave to a railway servant will, so far as is possible, grant casual leave to a railway servant who is a representative of a recognized association to attend duly constituted meetings of the association. The grant of such leave will be subject to the exigencies of the service, or which the officer in question shall be the sole judge.

Note – The Unions and their Branches should not correspond with the Railway Board direct and such references should be appropriately addressed to the authorities of the Railways concerned.
2517. Government may delegate any of its powers under the preceding rules to any authority subordinate to it.

2518. These rules supersede all previous rules in respect of all associations to which they are applicable.

**PART – C**

**Conditions precedent to the recognition of a Union by a Railway Administration**

(i) That the Union is registered under the Indian Trade Unions Act, 1926 (XVI of 1926).

(ii) That the Union agree that all representations from them must be through the Central Executive Committee to the General Manager and representations from branches of the Union must also be made only through the Central Executive Committee. It will, however, be open to the Railway Administration by agreement with the Union to arrange for matters relating exclusively to one department to be referred direct to the head of that department and for matters of purely local interest to be referred by a branch of the Union to a Divisional or District Officer for discussion.

(iii) That the Union agree that Leave, Passes and Privilege Ticket Orders admissible under the rules to a railway servant will be allowed to him for attending meetings or conducting the affairs of the Union, at the convenience of the Administration. Special passes and
special casual leave will be allowed to members of any delegation called to interview the head of the Administration; the casual leave and passes in the latter case not counting against the annual casual leave and privilege passes admissible to the railway servant under the rules. Special passes to Union officials (whether outsiders or railway servants) available over the Home Line only may also be allowed to enable them to attend Union meetings subject to a maximum number of passes per annum as prescribed by the competent authority from time to time, for a certain number of the officials of each Union, such number being fixed by the Railway Administration. Railway servants when granted these special passes as Union officials will be allowed special casual leave also.

Note – The pass issued under this rule will be of the 2nd Class or above. The President of a Recognized Union may be issued a 1st Class pass at the discretion of the General Manager or the Chief Administrative Officer.

First Class Passes available over Home Line only may, however, be given at the discretion of the General Managers to the Presidents of recognized Unions, who are not railway servants.

(iv) That the rules of the Union, subject to such modifications as may be mutually agreed between the Administration and the Union, shall be as follows:-

(1) The name of the Trade Union is _____________hereinafter referred to as the Union.
(2) The headquarters of the Union are at ________________.

(3) The objects of the Union are as defined in or permissible under the Indian Trade Unions Act, 1926.

(4) The supreme government of the Union vests in the general body of the members of the Union and is to be exercised in the manner hereinafter prescribed.

(5) The general body of the members of the Union shall comprise:-
   (i) The annual general meeting.
   (ii) Any other general meeting convened and constituted in the manner prescribed for the annual general meeting.

Note:- Where it is not practicable to arrange for a general meeting to be convened for the discussion and disposal of any definite issue, the point may be referred to all the members of the Union for balloting in the manner hereinafter prescribed. Any question relating to the withdrawal of labour must invariably be submitted for balloting.

(6) Annual General Meeting

   (a) The annual general meeting shall be held as soon as practicable after the completion of the annual auditing of the accounts.
   
   (b) Notice of the date, time and place of the annual general meeting shall be given by the General Secretary at least a fortnight
before the date fixed for the meeting by the distribution of handbills and the pasting up of notices in the Central and Branch offices of the Union. Such notices shall also contain particulars of the business to be transacted at the meeting. Similar notices may also be published in the Press.

(c) The office-bearers, i.e. the members of the Central Executive Committee of the Union and delegates elected at a meeting of the branch from each branch at the rate of one delegate for every ........... members or part thereof shall constitute the annual general meeting of the Union. Such delegates shall also represent their respective branches at any other general meeting of the Union. Such delegates shall also represent their respective branches at any other general meeting of the Union during the succeeding twelve months or till such time not exceeding fifteen months, from the date of the last general election.

(d) A general meeting other than the annual general meeting may be convened whenever the Central Executive Committee deems it necessary and must be so convened on receipt of a requisition signed by ten per cent of the members of the Union.

(7) **Balloting** – When it is decided by the Central Executive Committee that a ballot of the members
shall be taken notice thereof shall be given in the manner prescribed for the annual general meeting. The procedure for taking the ballot shall be prescribed by the committee according to the circumstances of each case, provided that the arrangements prescribed ensure secrecy and facility for voting for all members. When such ballot is in connection with a proposal for the withdrawal of labour, no action shall be taken on the proposal unless there is a three-fourth majority in support of it, and provided further that the total number of votes recorded at the ballot is not less than fifty one per cent of the number of members in the Union.

(8) Branches of the Union may be opened as and when considered necessary by the Central Executive Committee who shall prescribe the rules for the establishment and conduct of such branches, consistent with the rules applicable for the supreme government of the Union.

(9) (a) Subject to the control of the general body of members there shall be a Central Executive Committee at the headquarters of the Union for the general management of the affairs of the Union constituted as follows :-

(i) The President of the Union.
(ii) Not more than two Vice-Presidents.
(iii) The General Secretary.
(iv) An Assistant Secretary or a Joint General Secretary.
(v) The Treasurer.
(vi) The Branch Secretary of each of the branch of the Union.

(vii) A representative elected by each branch for every.....members or part thereof of the said branch.

(b) The powers of the Central Executive Committee, with regard to the general management of the affairs of the Union, shall include the right of suspending or removing from the Union any office-bearer or member thereof provided that-

(i) the mater has been specifically included in the agenda for the meeting of the Committee, and

(ii) the decision for suspension or removal is arrived at by a three-fourth majority of those present at the meeting.

A person so suspended or removed shall have the right of appeal to a general meeting whose decision shall be final.

(10) (a) Subject to the provisions of Section 22 of the Indian Trade Unions Act, 1926, persons holding the offices referred to in Clauses(i) to (v) of Rule 9(a) need not necessarily be railway servants. They shall be elected at the annual general meeting and shall ordinarily hold office for one year or until the next annual general meeting.
(c) Office-bearers and representatives under Clauses (vi) and (vii) of Rule 9(a) shall be elected from those ordinary members of the Union who have attained the age of twenty one years.

(11) **Quorum for meetings**

(a) The quorum for a meeting of the Central Executive Committee shall be thirty per cent of the number constituting the Committee.

(b) The quorum for a general meeting shall be twenty per cent of the total number of delegates elected to represent branches at such a meeting.

(12) **Accounts**

(a) The purposes for which the general funds of the Union shall be applicable are those prescribed in Section 15 of the Indian Trade Unions Act, 1926.

(b) The responsibility for the safe custody of the moneys of the Union shall vest in the central Executive Committee. The funds shall, if not invested in trustee securities, be deposited in one of the Scheduled Banks or in the Post Office Savings Bank. If deposited in a Scheduled Bank, they may be withdrawn therefrom as required by cheques signed by the Treasurer and either the President or the General Secretary.
(c) The accounts shall be maintained and audited by a qualified person, in the manner prescribed by the Indian Trade Unions Act, 1926.
(d) The accounts of the Union shall be open for inspection during the office hours of the Union on not less than seven days notice given in writing by any member or officer of the Union or by any person deputed for this purpose by the Railway Administration. Copies of the annual accounts and of the annual report of the Union will be submitted to the Railway Administration.

(13) **Membership**

(a) All servants of the …… railway shall be entitled to become ordinary members of the Union on their signing an agreement to the effect that they will abide by the rules of the Union and on payment of the subscription due under the rules. The rate of subscription shall be as follows-
(b) An ordinary member of the Union shall cease to be a member if his subscription to the Union is in arrears for more than three months from the end of the period to which such subscription relates, or when he ceases to be servant of the………….railway.

(c) The Central Executive Committee shall have the power to refuse admission as a member to any railway servant without assigning any reason, but such person may appeal to a general meeting of the Union within a period of six months from the date on which he was advised of this refusal.
(d) The register of members, both ordinary and honorary, shall be open for inspection during the office hours of the Union on not less than seven days’ notice given in writing by any member or officer of the Union or by any person deputed for this purpose by the Railway Administration.

(14) Subject to the provisions of Section 22 of the Indian Trade Unions Act, 1926, the Central Executive Committee shall have power to admit, in the interests of the union, as an honorary member any person who is not a railway servant, provided he is selected to hold one of the offices referred to in Clauses (i) to (v) of rule 9(a).

(15) **Alteration of rules and dissolution of Union**—

The rules of the Union may be amended, varied or rescinded, and the Union may be dissolved on a decision taken by a three fourths majority at a general meeting called for the purpose. The general meeting shall be arranged for the purpose. The general meeting shall arrange for the proper disposal of the assets and liabilities of the Union when the dissolution of the Union has been registered.
The General Managers,
Indian Railways.

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. D(L) 61/UTI-95/1 dated 19.9.61, it was laid down that the 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. It 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.


Sd/-
(M.M. VASWANI)
Addl. Director, Estt(Spl.)
Railway Board.
The General Managers,  
All Indian Railways.

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 Parts ‘B’ and ‘C’ of Chapter XXV of IREM, Vol. II 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.


Sd/-
(P.Chattarjee)
Director,Estt.(Labour)
Railway Board.

**(Letter withdrawn under Board’s letter of even no. dated 18.07.2002)**
GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)
(RAILWAY BOARD)

The General Managers,
Central Railway, Mumbai,
Eastern Railway, Kolkata,
Northern Railway, Baroda House, New Delhi,
North Eastern Railway, Gorakhpur,
Northeast Frontier Railway, Maligaon, Guwahati,
Southern Railway, Chennai,
South Central Railway, Secunderabad,
South Eastern Railway, Kolkata,
Western Railway, Mumbai.

Sub : Request by Bharatiya Railway Mazdoor Sangh and others for
grant of recognition – Interim Stay order granted by High
Court of Madras.

Ref : Railway Board’s letter of even number dated 26.6.2002.

***

On a Writ Petition 25274-2002 filed by Southern Railway Mazdoor
Union in the High Court of Madras, questioning the circular of Railway Board
under reference, the Hon’ble High Court has granted interim stay of operation of
the Railway Board’s circular aforesaid. A copy of the interim order of the High
Court when received will be forwarded to you immediately. In the meanwhile
ensure strict compliance of the interim directions of the Hon’ble Court staying the
operation of Board’s letter of even number dated 26.6.2002 regarding
consideration of grant of recognition on receipt of applications from BRMS and
others.

Sd/-
(Madan Lal)
Dy. Director, Estt (LR)I
Railway Board.
IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special original jurisdiction)

Tuesday, the Sixteenth day of July Two Thousand Two

PRESENT

THE HONOURABLE MR.JUSTICE V. KANagarAJ

W.P. MISCELLANEOUS PETITION No. 34701 of 2002

in WP. 25274 of 2002

THE SOUTHERN RAILWAY (PETITIONER)
MAZDOOR UNION, REP.BY ITS GENERAL SECRETARY,
19-B RAILWAY COLONY,
EGMORE,
CHENNAI.-600008.

THE RAILWAY BOARD. (RESPONDENTS)
CHAIRMAN, MINISTRY OF RAILWAYS,
RAIL BHAVAN,
NEW DELHI –110001

2. THE SOURTHER RAILWAY,
REP.BY THE GENERAL MANAGER,
PARK TOWN,CHENNAI-600002

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to stay the operation of the Circular issued by the first respondent in No. E(LR)I/ 2000/LR 1-30 dated 26.06.2002. pending W.P. No.25274 of 2002.

ORDER:- This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon bearing the
arguments of Mr. R. Krishnamoorthy, Senior Counsel for Mr. A. Jeenasan, Advocate for the petitioner, the Court made the following Order:-

Interim stay and Notice.

sd/-
16/7/2002

TRUE COPY

Sub: Assistant Registrar (Statistics/C.S)
High Court, Madras-600104

To,

THE CHAIRMAN, THE GENERAL MANAGER,
RAILWAY BOARD SOUTHERN RAILWAY
MINISTRY OF RAILWAYS, CHENNAI-600002.
GOVT. OF INDIA, RAIL BHAWAN,
NEW DELHI-110001.

C.C. to Mr. A. JENASENAN, Advocate, on payment of necessary charges.

ORDER
in
WPMP 34701 of 2002
in
WP 25274 of 2002

From 26.2.2001 the Registry is issuing Certified copies of the Interim orders in this format KUN/
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 11.10.2002

CORAM

THE HONOURABLE MR. JUSTICE E.PADMANABHAN

W.P. No.25274 of 2002

W.P.M.P NOS. 47937 & 34701 OF 2002

W.V.M.P No.1007 OF 2002

Southern Railway Mazdoor Union (Petitioner)
    rep.by its
    General Secretary
    19-B,Railway Colony
    Chennai.-600008.

The Railway Board (Respondents)
    rep.by its Chairman
    Ministry of Railways
    Govt.of India
    Rail Bhawan,
    New Delhi –110001.

Southern Railway
    rep. by its General Manager
    Park Town
    Chennai-600003.

Dakshin Railway Karmik Sangh
    rep.by its General Secretary
    Mr. K.Selvanathan
    No.3, Devarajulu Naidu Street
    Ayanavarm
    Chennai-23.
The Railway Mazdoor Union  
Ist Floor, 19, Vacharaj Lane  
Matunga(Central Railway)  
Mumbai- 400019  
Rep. by its Secretary  
Nandakumar.

Respondents

RR3 & 4 Impleaded as per  
orders of the Court dated  
8.10.02 in WPMP Nos. 47926  
55 946 of 2002)

Petition filed under Article 226 of the Constitution of India  
praying this court to issue a Writ of certiorarified Mandamus as stated  
therein.

For Petitioner : Mr. R. Krishnamurthi, SC,  
for M/s Jenasenan

For Respondents : Mr. V.T. Gopalan,  
Addl. Solicitor General  
for RRI & 2  
Mr. Sampath Kumar for R3  
Mr. A.Thiagarajan for R4
ORDER

1. The petitioner, namely, Southern Railway Mazdoor Union prays for the issue of writ of certiorarified mandamus to call for the proceedings of the first respondent in No. E(LR)III/2000/LR 1-30 dated 26.6.2002, quash the same and consequently direct the respondents to consider and grant recognition to union only after the membership strength of the said Unions are decided on the basis of physical verification.

2. According to the writ petitioner, (hereinafter referred to as SRMU for brevity), it is not only a registered trade union, but also a recognized union and has been striving hard to achieve better and fair conditions of service and life to its members who are employed in the Southern Railway. SRMU is one of the premier trade unions and has majority of the workmen of the Southern Railway as its members from its inception. The petitioner further claims that it commands majority even as of today. In all out of 1,32,000 employees in the category of workmen are employed by the Southern Railway. The petitioner SRMU claims that it has 1,06,000 employees on its roll as members. The SRMU is affiliated to All India Railwaymen Federation founded in 1924, which is an Apex body enjoying the support of 12 lakh railway employees. The said all India Railwaymen Federation is recognized by the Ministry of Railways.
3. The Trade Union Act does not deal with the recognition of union. Chapter XXV of the Railway Establishment Manual deals with the recognition of service association and trade union by the Railway Administration. SRMU was recognized by Railway administration way back in the year 1965. SRMU files the prescribed returns, its accounts are audited in terms of the Trade Union Act and the Railway Establishment Manual from time to time. As a recognized Trade Union, the petitioner not only enjoys but also commands considerable extent of participation in the permanent negotiation machinery at all levels. Apart from SRMU, Southern Railway Employees Sangh is another registered union recognized by the Railway Administration. The said Sangh is affiliated to National Federation of Indian Railways, which is an apex body.

4. The Railway administration instructed that the union should have atleast 15% of the employees as its members to claim recognition. On 28.10.85 the railway administration issued a circular laying down the norms for recognition of the trade unions. According to the revised norms, for the union to be recognized there must be a minimum of 30% of non-gazetted employees as its members before it is being recognized by the Railway administration. The Bharatiya Railway Mazdoor Sangh, another Railwaymen Federation, which was not recognized by the Indian
Railways, but various trade unions have affiliated themselves to the said apex body. Such registered trade unions have very few members from the railwaymen on its rolls and it is negligible when compared to the membership of the petitioner union.

5. The Bharatiya Railway Mazdoor Sangh seem to have applied to the Railway board for grant of recognition, but it has not been considered in the light of the 1985 circular.

6. The Railway Board has issued a new circular dated 26.6.2002 directing the General Manager of all Indian Railways to consider the application made by the affiliates for the grant of recognition, if such trade union has a membership of at least 30% of the non-gazetted employees they seek to represent. The said circular was issued on 26.6.2002 in supersession of the earlier circular dated 28.10.1985. The Railway administration has enabled the said Trade Unions to decide the strength of the new Unions on the basis of annual return submitted by these unions to the Registrars of Trade Unions. The circular issued is illegal and arbitrary since the existing recognized union including the petitioner represent almost the entire employees of the Southern Railway. There must be actual or factual verification of the membership strength of 30% and it should not be based upon annual reports or forms submitted by the respective Unions to
the Registrar of Trade Unions and such a procedure is illegal and arbitrary, besides being inconsistent with the uniform stand taken by the Railway administration. Hence, the petitioner has come before this court challenging the circular dated 26.6.2002.

7. The railway administration, namely, the respondents I and 2 have filed a counter resisting the writ petition. According to the railway administration, Bhartiya Railway Mazdoor Sangh has been pressing its claim for recognition for a very long time. In fact, during the year 1986 the said Sangh moved the Supreme Court in W.P. No.1586 of 1986. The Supreme Court, while disposing of the writ petition on 25.1.1989, directed the said Sangh to apply for recognition to the railways, which will be considered by the Railways in accordance with the existing rules for such recognition. The power to grant recognition vest with the General Manager of the Zonal Railways only. The constituents of Bhartiya Railway Mazdoor Sangh applied to the General Manager concerned along with necessary documents for recognition. While the said application was under consideration and the General Manager was ceased of the matter, the said Bharatiya Railway Mazdoor Snagh moved C.M.P No.9598 of 1989 for non-compliance of Supreme Court directive dated 25.1.1989. The Apex court issued fresh directions on 7.8.89 directing the General Manager to consider
the request for recognition based on information and particulars to be supplied by the Unions. The application was heard on 25.9.95 and during the hearing the said Bharatiya Railway Mazdoor Sangh withdrew the writ petition with liberty to raise a dispute and the Supreme Court had not decided the merits of the said writ petition.

8. The annual returns as prescribed under the Trade Union Act in form “D” does not require a list of members, but it requires to state the number of members at the beginning of the year, the number of members admitted during the year and the number of members left during the year. Such annual returns, therefore, enables the Railway administration to know the membership of various trade unions without actual physical verification and it may not be necessary to undertake such a verification in the normal course. The petitioner is enjoying the recognition with all consequential facilities from the Railway Administration on the basis of the same annual returns prescribed under Form “D” without any actual verification. Hence, the petitioner has no legal basis or competence to challenge the application of the method adopted in the case of Bharatiya Railway Mazdoor Sangh or any other union seeking for recognition.

9. The petitioner’s attempt to project as if the return submitted before the Registrar of Trade Unions has no legal sanctity. It is
submitted that the annual return submitted by the unions to the Registrar of Trade Unions is a reliable piece of membership strength and it cannot be rejected outright as bogus as furnishing of false return, if any, is objectionable under Section 28(l) of the Trade Union Act. Further, the trade unions has to submit its returns during the year ending on 31st December of next preceding and they have to submit it annually to the Registrar on or before the date prescribed. Section 28 (4) of the Trade Unions Act provides that for the purposes of examining the documents referred to in Sub-section (1), (2) and (3), the Registrar or any officer authorized by him at times inspect the certificate of registration, account books, registers and other documents relating to the Trade Unions at its registered office or may even call upon the production of such documents as it may specify in this behalf. Failure to observe the said provisions of the Act attracts Section 31 (2) which is a penal provision, which provides that any person who wilfully makes or causes to be made, any false entry in, or omission from, the general statement required by Section 28 or in or from any copy of rules of alterations of rules sent to the Registrar under that Section shall be punishable with fine.

10. The Unions to not have any unfettered freedom to claim any membership strength in the annual return forms without being prepared
to face legal consequence, which includes penal consequence in case they file any fictitious or unauthorized figure or information in their return. It is further stated that the Ministry of Railways are not opposed to one union for one industry. The apprehension expressed by the petitioners are baseless. The impugned circular in no way entitle to help the union sponsored by the ruling party in the Central Government by grant of recognition to union affiliated to Bharatiya Railway Mazdoor Sangh without fulfilment of one of the basic conditions of the member strength of 30% of the total employees in the respective zones. The petitioners while insisting that the Railway should rely on actual physical verification and not the annual return submitted by a Union and accepted by the Registrar of Trade Unions in assessing the correct strength of membership, was deliberately ignoring the fact that their own claim of membership on which they are at present enjoying recognition is not based on actual physical verification. The petitioners own membership strength year after year is based on annual returns submitted by the petitioner Trade Union to the Registrar of Trade Unions in terms of the statutory provisions of the Trade Unions Act.

11. It is ironical that the same basis spelt out in the impugned order in considering the recognition of Bharatiya Railway Mazdoor Sangh’s affiliated Unions and others has been objected to by the petitioner and such
objections are meaningless. The circular issued by the Railway Board or instructions have been issued on equitable consideration and to uphold justice. The contention that the impugned circular is violative of Article 14 or principles of equality is a misconception and cannot be sustained.

12. It is essential to set out certain portions of the counter affidavit filed by respondents 1 and 2 in the writ petition:-

“(vi) I submit that the Petitioners, while insisting that the Respondents should rely on actual physical verification and not the annual return submitted by a Union and accepted by the Registrar of Trade Unions, in assessing the correct strength of membership, are oblivious of the fact that their own claimed membership on which at present they are enjoying recognition and are trying to block grant of recognition to Bharatiya Railway Mazdoor Sangh, is not based on actual physical verification. On the other hand, the petitioner’s own membership strength year after year is based on annual returns submitted to the Registrar of Trade Union, in terms of the Trade Union Act. It is ironical that the same basis spelt out in the impugned orders for considering recognition to Bharatiya Railway Mazdoor Sangh affiliated unions and others has been termed as “wholly arbitrary” and “absolutely meaningless” by the petitioner, in the writ petition.

*          *          *
viii) I respectfully submit that the regulations for recognition of Railway unions permit an employee to be a member of more than one union in the sense that the membership of multiple unions is not forbidden. Even according to the statistics given by the petitioner union in their affidavit to the counter, it is seen that two unions including the petitioner union put together have a membership which far exceeds the total number of employees. While so, it is not open to the petitioner union to object the another union complying with the same requirements as the petitioner union had done earlier to get recognition. Therefore, the above said writ petition is absolutely frivolous and totally devoid of merits.

*    *    *

x(d) Notwithstanding that the minimum membership strength is a very vital condition, the Ministry of Railways or its constituent Zonal Railway have no machinery of their own to verify in a detailed objective manner the membership figures indicated by the Unions. The memberships of the Unions as certified by respective Registrar of Trade Unions are being accepted as authentic for this purpose. In other words, the figures of membership strength given by the Registrar of Trade Unions are accepted in respect of the Unions already recognized and these are expected to be furnished by the Unions annually. The method, which is rightly to be
followed to assess the membership in a realistic manner, should be either through a secret ballot system or “checkoff system” (in which an employee indicates the Union to which he wished to pay subscription at the time of payment of salary). Both these systems require considerable organizational arrangements being put in place, which will necessarily imply additional expenditure, which the Railways can ill afford in their present financial status. Considering the strength of the workforce on Indian Railways, any exercise of this nature, akin to mini general election, is bound to lead to fruitless diversion of the attention of the management and staff from the main functioning of construction, operation, maintenance and regulation of the railways, at a time when all out efforts need to be made to improve the financial position of the railways.

*             *                *                    *                    *                     *

x(i) Thus, it was decided in the Ministry of Railways at the highest level, i.e the Minister for Railways to instruct the General Managers to consider the case of recognition of Bharatiya Railway Mazdoor Sangh and others on the basis of the rules provided for in parts ‘B’ and ‘C’ of chapter XXV Indian Railway Establishment Manual- Volume II- 1990 edition and the membership strength of 30% of the total non gazetted employees of the respective zones decided on the basis of the
annual return forms for the latest year submitted by Zonal unions to the respective Registrars of Trade Union.

*               *                   *                     *

X(k) I submit that the method of reckoning the membership strength, as spelt out in the impugned order is the very point of contention of the petitioner in support of their prayer not to consider and grant recognition to Bhartiya Railway Mazdoor Sangh. I submit the same is self-defeating in as much as the petitioner’s own claimed membership rests on that very basis. Since the basis on which the membership is reckoned is uniform both to the petitioner and the Bhartiya Railway Mazdoor Sangh as well, the said basis being uniformly applied by the respondents in respect of all the three contenders, namely, AIRF, NFIR and BRMS, the respondents are in the process only trying to uphold the provisions and apply them equally as enshrined in Article 14 of the Constitution of India. I therefore submit that there is nothing arbitrary or illegal in the action of the respondents, as sought to be made out in the writ petition. The petitioner themselves on the other hand, have not supported their claim of membership by any other recognized and accepted method of verification.”
13. Though the Railways have no objection for physical verification or check-up system, but according to the Railways it is not humanly possible to verify either actually or physically all the members of the respective Unions as they claim and it is too costly, besides time consuming. It is further contended that the petitioner’s claim of membership is accepted and recognized on the identical basis, there is no reason at all to adopt a different standard in respect of Unions who came to serve the railway employees on a later date. The said respondents 1 and 2 prayed for dismissal of the writ petition.

14. The respondents 3 and 4, who got themselves impleaded in this writ petition have taken an identical stand and contend that the circular is not liable to be interfered nor it is violative of Article 14 or any other constitutional provision. It is pointed out that neither the writ petitioner union nor the Southern Railway Employees Sangh has been recognized by physical verification of its respective members at any point of time and the only modality by which the claim of the respective Union has been accepted being as having more than 30% of non-gazetted employees as members on its rolls is by the annual return submitted by the respective Unions. It is also pointed out that SRMU claims 80% of the total employees, while the Southern Railway Employees Sangh claims
72% of the employees. A third party, namely, the 3rd respondent claims that it has 37.75% of employees as its members in the zone. There is too much discrepancy in the claim of the writ petitioner as well as other recognized Unions. The third party however states that so long as the statement that it has more than sufficient number of representatives for being recognized, the present writ petition is an attempt to delay the recognition of the 3rd respondent Union by some means or other. Identical contention has been advanced by the 4th respondent Union as well.

15. Heard Mr. R.Krishnamurthi, learned senior counsel appearing for Mr. Jenasenan, for the petitioner, Mr. V.T.Gopalan, learned Additional Solicitor General appearing for respondents 1 and 2, Mrs. Sampath Kumar, learned counsel appearing for the third respondent and Mr. A. Thiyagarajan, learned counsel appearing for the fourth respondent. Respondents 3 and 4 were impleaded by order dated 8.10.2002.

16. It is the contention of Mr. R. Krishnamurthi, learned senior counsel that the circular dated 26.6.2002 is arbitrary, illegal, violative of Article 14 and, therefore, it is liable to be quashed. It is further contended that the circular has been issued at the instance of the party which is ruling the Central Government and it is vitiated by legal mala
fides. Mr.R.Krishnamurthi, learned senior counsel, while representing that the check-off system or actual physical verification has no application to the Railways, yet sought to contend that the said system is the best system and only after such physical verification or check-off the application submitted by respondents 3 and 4 has to be taken up for consideration. The pronouncement of the Supreme Court in AIR 1991 SC 1250 (GENERAL SECREATY, ROURKELA SRAMIK SANGH VS. ROURKELA MAZDOOR SABHA & OTHERS) is fairly admitted by Mr.R.Krishnamurthi, will have no application. However, the senior counsel relies upon the pronouncement of the Division Bench of this Court in 1995 (2) LLJ 272 and 2002 (4) SC Judgements Today 537 in support of his contention that proper check-off system should be followed.

17. Per contra, Mr.V.T.Gopalan, learned Additional Solicitor General contends that the circular, in sum and substance is the same as was in force earlier and what was the condition that has been prescribed for recognition of the petitioner union is being followed in respect of respondents 3 and 4 and there shall not be any deviation with respect to the verification of membership as claimed by respondents 3 and 4 vis-à-vis the writ petitioner and any other recognized union. It is contended that merely because the petitioner is already recognized, it
cannot block other Trade Unions being recognized, provided if they establish that they represent 30% of the employees of the Railways. It is contended that the impugned circular is not violative of either Article 14 or 19 or any other Constitutional provision nor it is violative of the Trade Unions Act. The learned Additional Solicitor General took the Court through the exchange of correspondence and submitted that it is not as if the Central Government has taken up the cause of the particular Union, but the Railway Board has considered the request of various other Trade Unions and in that background the impugned circular has been issued, which circular in no way runs counter to the earlier circular in terms of which the writ petitioner Trade Union was recognized by the General Manager.

18. Mr. Sampath Kumar, learned counsel appearing for the 3rd respondent and Mr. A. Thiyagarajan, learned counsel appearing for the fourth respondent supported the stand taken by the learned Additional Solicitor General.

19. The only point that arises for consideration in this writ petition is:
“Whether the impugned circular is liable to be quashed as violative of Article 14 or vitiated by legal mala fides or violative of any other statutory provision or rule or regulation prescribed in this behalf?”

20. Before taking up the point for discussion, it is relevant to extract the two circulars, namely, the Railway Board circular dated 28.10.1985 as well as the circular impugned in this writ petition. The Railway Board circular dated 28.10.1985 reads thus:

“No.E(LR)I/83/NMI-23              Dated 28.10.1985
New Delhi
All General Managers
Indian Railways

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. D(L) 61/UTI-95/1 dated 19.09.61, 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. It 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.”

21. Apart from the said circular, Chapter XXV of the Railway Manual prescribes the rules for service associations of Railway servants. The relevant clause reads thus:

“2512. 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 previous
denomination or of any group within or station 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 Indian Trade Unions Act.”

“2513. Government may require the regular submission of copies of the rules of any recognized association of its annual accounts and of its list of members.”

There is no controversy with respect of Chapter 25 of the Railway Establishment Manual as well as the circular dated 28.10.1985, which is in force since 1985 onwards.

22. The circular, which is impugned in this writ petition reads thus:


The General Managers
All Indian Railways

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

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 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.”

23. A perusal of the circular dated 28.6.2002 would show that this circular supercedes the earlier circular dated 28.10.1985. As seen from the circular dated 26.6.2002, it is not only Bhartiya Railway Mazdoor Sangh, but also others who have been approaching the Railway Board and Railway Administraion for recognition for a long time since. The said Bhartiya Railway Mazdoor Sangh also moved the Supreme Court on the earlier occasion and it is not as if the Bharatiya Railway Mazdoor Sangh has come into force for the first time after the present Central Government has
come into power. Therefore, it cannot be claimed that Bharatiya Railway Mazdoor Sangh is given a favourable treatment either directly or indirectly by way of relaxation of the standards prescribed for recognition of the Trade Unions.

24. A perusal of para 2 of the circular impugned dated 26.6.2002 like the circular dated 28.10.1985 prescribes that the union should have a membership of at least 30% of the non-gazetted employees they seek to represent. The claim of unions that they represent 30% of the non-gazetted employees in the respective zones has to be decided on the basis of annual returns or forms or declarations made for the latest year submitted by the zonal unions to the respective Registrars of Trade Unions and is certified or accepted by the said Registrar. This was exactly the procedure, which was adopted when the writ petitioner and one another registered trade union were recognized. It is nobody’s case that the total number of members of each recognized union has either been verified by head counting or by a check-off system or by secret voting of the Railway employees of the zone.

25. It is fairly admitted by Mr.R.Krishnamurthi that dual membership is permitted in the by-laws of some of the trade unions and, therefore, there is discrepancy in the claim of total membership either by the writ petitioner Union or by the other Unions. Each one claim so much of
membership and if they are aggregated together it may even double the workmen employed in the Railways. All that is required or prescribed by the impugned circular being that the Union has to represent 30% of the workmen employees and the return or Declaration filed before the Registrar of Trade Unions as well as the forms filed could be the basis of such claims. In other words, it is not necessary to adopt a check-off system or follow a method of head counting, when valid material is available and which was the practice adopted for decades.

26. Though it is attractively suggested that the writ petitioner would place the funds required for physical verification or head counting on behalf of the railways it is stated that they have taken a policy decision as of today not to change the system as the Indian Railways has the highest employees and if such a system has to be introduced in one railway it has to be introduced in all the other railways, which will lead to unnecessary complications and also result in substantial expenditure. It is neither necessary nor warranted to resort to such procedure.

27. The learned Additional Solicitor General as well as Mr. Sampath Kumar rightly pointed out that each of the Trade Unions, which represent employees of the railways have to file the requisite forms, Declarations and returns in terms of the provisions of the Trade Unions Act
and in case a false statement or return is filed, they are liable to be prosecuted. That apart, the audited accounts are being filed and it is certified by Chartered Accountant as well. Definitely certain amount of sanctity should be attached to the returns or forms or Declarations filed by the respective Unions before the Registrar of Trade Unions.

28. While contending so, it is rightly pointed out by the counsel for the respondents that the petitioners, who have secured recognition on the earlier occasion by adopting the same procedure now cannot contend that respondents 3 and 4 should be subjected to a different scale or procedure or head counting or check-off system. This contention advanced by the learned Additional Solicitor General and Mr.Sampath Kumar deserves acceptance and it has to be sustained. One way of finding out the membership of the particular Trade Union is accepting the return filed by the Trade Union or other forms or declaration before the Registrar of Trade Unions as was hitherto done before and there is no illegality in the said procedure nor it is violative of Article 14.

29. As regards the legal mala fides, it is submitted that there is no basis at all and such legal mala fides cannot assumed on mere surmises or conjectures. As already pointed out, it is not only the respondents 3 and 4 who seek recognition, but also various other unions and they are not the
members of the ruling party. On the other hand, they have been agitating for such a request for several years, besides moving the Supreme Court in this behalf. The legal mala fides advanced by the petitioner cannot be sustained and has to be negatived.

30. Though Mr. R. Krishnamurthi, learned senior counsel strenuously contended that check-off system is the best system and secret ballot has to be conducted as was ordered by the Division Bench of this Court in 1995 (2) LLJ 272. It is due that such a system is a laudable one, but the Railways cannot be compelled to adopt such a system as it is not only impracticable, but also costlier and it may not at all be necessary once the forms prescribed or declaration prescribed or the returns prescribed in the Trade Unions Act and the particulars set out therein is adopted as one of the criteria to find out whether the particular Trade Union represents 30% of the employees of the zonal Railway.

31. There is no arbitrariness in the circular impugned nor it is violative of Article 14 nor it is violative of any other provision or pronouncement of the Apex Court. When more than one system is available and if such a system is being adopted by the Railways all these years, which was also the procedure adopted in the case of the writ petitioner, there is no reason or rhyme in the contention that the impugned circular is arbitrary or
The pronouncement in GENERAL SECREATRY, ROURKELA SRAMIK SANGH VS. ROURKELA MAZDOOR SABHA & OTHERS reported in AIR 1991 SC 1250 is being relied upon, but the very same judgment makes it clear that the principles laid down, it has been made clear do not apply to Railways. Excepting contending that the circular is violative of Article 14, no authority has been cited in support and there are no merits in the contention advanced by the petitioner.

32. It is rightly pointed out by the learned Additional Solicitor General that it is not open to the petitioner-Union to block or obstruct any other registered Trade Union coming forward to represent 30% of the workers if they are in a position to substantiate that they also have 30% of the railway employees as members and those Unions could also be recognized in terms of the existing rules. This contention of the learned Additional Solicitor General deserves to be sustained.

33. In the foregoing circumstances, this writ petition is dismissed as devoid of merits. Consequently, the order of interim stay granted in WPMP No.34701 on 16.7.2002 is vacated and it is dismissed. Consequently, WVMP No.1007 of 2002 is allowed. W.P.M.P No. 47937 of 2002 is closed. Parties shall bear their respective costs.
11.10.2002

GLN

Sd/-

/True copy/ Assistant Registrar

Sd/-

Sub-Assistant Registrar

To

1. The Railway Board
   rep.by its Chairman
   Ministry of Railways
   Govt.of India
   Rail Bhawan, New Delhi 1.

2. The Southern Railway
   rep.by its General Manager
   Park Town
   Chennai 600 003.

   • 1 cc to Mr.V.R.Gopalan, Advocate Sr.No.54581
   • 1 cc to A.Jenasenan
   • Advocate Sr.54531
   • 1 cc to Mr. A.Thiagarajan Advocate SR.54702.
   • 1 cc to M/s Sampath Kumar Associates SR. 54771.

WP.No.25274 of 2002
In the High Court of Judicature at Madras

Dated : 17.10.2003

Coram :

The Honourable Mr. Justice R. Jayasimha Babu

and

The Honourable Mr. Justice P. K. Misra

Writ Appeal No. 3168 of 2002

The Southern Railway Mazdoor Union, rep. by its General Secretary,
19-B. Railway Colony,
Egmore, Chennai 600 008.

Appellant

1. The Railway Board,
   Rep. by its Chairman.
   Ministry of Railways,
   Government of India,
   Rail Bhawan
   New Delhi.

2. The Southern Railway,
   rep. by its General Manager,
   Park Town, Chennai 600 003.

3. Dakshin Railway Karmik Sangh
   Rep. by its General Secretary
   K. Selvanathan
   No. 3, Devarajulu Naidu Street
   Ayanavaram, Chennai- 23.

4. The Railway Mazdoor Union,
   I Floor, 19 Vacharaj Lane,
   Matunga (Central Railway),
   Mumbai 400 019,
rep. by its Secretary K.Nandakumar

5. All India Railwaymen Federation,
rep. by its Zonal Secretary,
New Delhi 110 001.

6. Southern Railway Employees Sangh,
Unity House, represented by
General Secretary
Chennai 11.

7. National Federation of Indian Railway
represented by General Secretary
No.3, Chems Ford Road, New Delhi.

8. Dakshin Railway Employees Union,
(Reg.No.3068), represented by its
General Secreaty A.Jankiraman,
Chepauk, Chennai 5.

(5th respondent impleaded as per order of Court dated 28.10.2002 made in WAMP No.5405 of 2002) : Respondents

(Respondents 6 & 7 impleaded as per order of Court dated 10.03.2003 in WAMP No.1321 and 1441 of 2003)

(8th respondent impleaded as per order of Court 10.03.2003 in WAMP. No.1321 and 1441 of 2003)


For Appellant : Mr.R.Krishnamoorthy, &
Mr.R.Muthukumarasamy
Senior Counsel, assisted by
Mr. A.Jenasenan
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<tr>
<th>Respondent</th>
<th>Lawyer details</th>
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<td>Respondent 1 &amp; 2</td>
<td>Mr. V.T. Gopalan, Additional Solicitor General for Mr. V.G. Suresh Kumar</td>
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<tr>
<td>Respondent 3</td>
<td>Mr. S. Sampath Kumar, Senior Counsel, assisted by M/s. Sampath Kumar Associates</td>
</tr>
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<td>Respondent 4</td>
<td>Mr. A. Thiagarajan</td>
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<td>Respondent 5</td>
<td>Mr. A.L. Somayaji, Senior Counsel for Mr. Sethuraman</td>
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<td>Respondent 6</td>
<td>Mr. R. Gandhi, Senior Counsel, for Mr. R.G. Narendran</td>
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<td>Respondent 7</td>
<td>Mr. Mohan Parasaran, Senior Counsel, for Mr. G.K. Muthukumar</td>
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<td>Respondent 8</td>
<td>Ms. R. Vaigai, For Mr. K. Elango</td>
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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 recognized by it at various levels in it’s nine Railway zones. There are two recognized 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.1.64 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.

2. 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 19.09.61. Exclusivity of membership of that minimum percentage is embedded in the norm so prescribed.

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

(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.

4. Of the two recognized unions at each level, one is affiliated to the All India Railwaymen Federation formed in 1924 and recognized from the year 1930, and the other, the National Federation of Indian Railwaymen 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.

5. The Bhartiya 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 recognized 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.

6. 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 months 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.

7. As of now, even as it was in 1949, there are only two recognized 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 optimizing 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.”

8. 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/UTI-95/1 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. It 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.”
9. 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.

10. Moreover the norm of thirty percent 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 recognized unions to three by making it mandatory for each recognized 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.
11. 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.II 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 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.”
12. 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.

13. 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 recognized 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 recognized 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.

14. 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.

15. The financial implications are mind boggling. At the current rate of Rs.12.00 crores annual expenditure on all the office bearers of one recognized union at all levels, the expenditure on the office bearers of ten recognized 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 1,32,000 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 recognized union at all levels the expenditure on the office bearers of 8000 unions would be Rs.96,000 crores.

16. Having regard to statutory minimum subscription of Rs.12/- per annum by a member prescribed under 8.6(ee)(iii) of the Trade Unions Act, 1926, even if it is assumed that a workmen 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.

17. 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.
18. Apparently, no attention has 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 24.2.2003, the Railway Board has chosen to reiterate the contents of that letter.

19. 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.

20. 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 recognized 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.
21. We have heard learned senior counsels Mr. R. Krishnamurthy, Mr. R Gandhi, Mr. A. L. Somyaji, and Mr. Mohan Parasaran, who appeared for the appellant, one of the two unions recognized by the Southern Railways affiliated to AIFR; the sixth respondent, the other recognized 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.

22. 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.

23. 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 percent 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 recognized 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.

24. By merely characterizing an administrative decision as a policy decision, such decision cannot be immunized from judicial review. Where the decision, ex facie, is grossly arbitrary and irrational, such a decision can not 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.

25. As observed by Lord Diplock in the case of Council of Civil Service Unions vs. Minister for 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 a 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”.

26. 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 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”.

27. 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.”

28. 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, AIR 1996 SC 11, a decision rendered by a three Judge Bench. The Court at Paragraph 89 of the judgement 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.”

29. In the case of Krishnan Kakkanath vs. Government of Kerela, 1997 (9) SCC 495, 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 can not 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 vs. Ram Luthaya Bagga (1998) 4 SCC 117. Yet another two Judge Bench in the case of Punjab Communications Ltd. Vs. Union of India, (1999) 4 SCC 727, 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.”

30. In the case of Ugar Sugar Works Ltd. Vs. Delhi Administration, (2001) 3 SCC 633, 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.”

31. The courts have refrained from interfering with decisions affecting the economy, recognizing 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 vs. Union of India and others, (2002) 2 SCC 333 , at paragraph 47.

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 vs. National Industrial Tribunal, AIR 1962 SC 171. 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 cl. (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 the 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, 1962-11 LLJ 615, held that Rule 48 of the Central Civil Services (Conduct) Rules 1955 restricting the right of a government servant to become a member of an association not recognized or when recognition is withdrawn, is un-constitutional.

34. Trade unions, however, have neither 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 recognized 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 recognized 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 its judgment in the case of Balmer Lawrie Workers Union vs. Balmer Lawrie & Co.Ltd., 1984 Supp. SCC 673 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 recognized 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 recognized 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.

36. 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 Organization 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 there in 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.

37. 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 Center 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 list of members and other records, after which verification is carried out. The Railways has not subscribed to the Code of Discipline.
38. 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 Ruls 5(d)(i) the association seeking recognition should represent at least 35 per cent of the employees. A second association may however be recognized, 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”.

39. 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.

40. The courts have on occasions directed the holding of secret ballot where several unions claimed the right to be sole bargaining agent. In the case of Food
Corporation of India Staff Union Vs. Food Corporation of India, AIR 1995 SC 1344, 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 overall supervision of the Chief Labour Commissioner.

41. The Court, in that case, in the course of its order observed, “The check off system which once prevailed in this domain has lost its 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 organizing 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-recognized unions are willing to consider that method only if recognition is first withdrawn for the presently recognized unions to create a level playing field. The other recognized federation is not in favour of holding a secret ballot.

42. 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 41658 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.

43. 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 be reported.
44. 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 8.9A 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.

45. 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.

46. 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 recognized unions, and results in the multiplication several fold the expenditure on the office bearers at the rate of Rs.12.00 crores for each recognized union, such a policy will have to be regarded as arbitrary, irrational, and perverse, and also against the public interest.

47. 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 in it’s knowledge those figures for the presently recognized 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 recognized unions as there are workmen and even with a much lesser number, every workman can be an office bearer of a recognized 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 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 unlimited number of unions. What was obviously intended was to reduce the number of unions that could be recognized at any given point of time from six which was the maximum if each recognized 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 recognized on the basis that each such union has as it’s 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 recognized 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 recognized 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 recognized, 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 recognized 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 it’s list of members had been scrutinized years earlier, inter alia, for the purpose of disregarding duplication of membership among that and other recognized 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 recognized 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 recognized 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 per cent of the non gazetted work force.

53. 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.

54. 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 recognizing only one more union, as it is nobody’s case that the unions
presently recognized 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.

55. The number of office bearers of recognized 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, can not be profligate,

56. 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 his recognized 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, can not 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.

57. 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.

Sd/-
Asst.Registrar
Sd/-

/True copy/

Sub.Asst.Registrar

17.10.2003

Copies to
1. Chairman,
The Railway Board,
Ministry of Railways,
Government of India,
Rail Bhawan, New Delhi.

2. General Manager,
The Southern Railway
Park Town
Chennai 600 003.

* 2 cc to Mr. V.G.Suresh Kumar, Advocate SR.60320.
  • 1 cc to Mr. R.G.Narendhiran, Advocate SR. 60600.
  • 1 cc to Mr. A. Thiyagarajan, Advocate SR. 60269.
  • 1 cc to Mr. K. Elango, Advocate SR. 60537.
  • 1 cc to M/s. Sampathkumar & Associates, SR. 60511.
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No. 3716/2004

(From the judgement and order dated 17/10/2003 in WP 3168/02 of the HIGH COURT OF MADRAS)

RAILWAY BOARD & ANR.
Petitioner(s)

VERSUS

SOUTHERN RAILWAY MAZDOOR UNION & ORS.
Respondent(s)

(With prayer for interim relief and office report)
With

SLP (C ) No. 3780/2004
Alongwith the paper-books of SLP(C ) No. 23578/2003

Date: 08/03/2004 These Petitions were called on for hearing today.

CORAM:

HON’BLE MRS. JUSTICE RUMA PAL
HON’BLE MR. JUSTICE ARUN KUMAR

For Petitioner (s) Mr. K.N. Rawal, SC
Mr. Vipin Sanghi, Adv.
Mr. Shreekant N. Tardal, Adv.

Mr. Indira Jaisingh, Sr. Adv.
Upon hearing counsel the Court made the following

ORDER

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 versus Food Corporation of India reported in AIR 1995 SC 1344 to hold that the method was a natural, rationale and viable alternative.

The SLPs are accordingly, dismissed.

Sd/-
(USHA BHARDWAJ)
P.S. TO REGISTRAR
9.3.04

sd/-
(MADHU SAXENA)
COURT MASTER
9.3.04
1.12.2006

Present: Mr. R.K. Khanna Sr. Advocate with Mr. S.S. Nehra for the petitioner.
Ms. Anuradha Priyadarshani for the respondent

CM No.9736/2006 & WP © N0.23873/2005

It is stated by learned counsel for the respondent that High Power Committee has been constituted to consider the modalities of holding election and to lay down rules for election. Learned counsel for the petitioner states that these modalities and rules have already been laid down and form part of record. He states that petitioner has objection only to clause 11 where the percentage for recognition of the Union has been stated to be 35% whereas the Hon’ble Supreme Court in its order dated 8.3.2004 has categorically upheld the High Court’s order of 30% membership exclusively for the membership of the Union as a condition for recognition. I consider that the Hon’ble Supreme Court considered the entire matter after hearing parties and 30% has been used for recognition of the Union this norm laid down can not be changed by the Committee. Let the committee consider holding election in the light of 30% requirement as laid down by the Supreme Court. However, clause (a), (b) & (c) of clause 11 of the earlier Rules shall be read as 30% instead of 35% and if a union gets more than 30% of the single vote of the total strength of the employees then all the
union getting this percentage of vote shall be considered as recognized union.

The entire election process be completed with six months from today and the committee may consider the holding of election as per procedure even in judgement FCI staff Union AIR 1995 SC 1344. The High Power Committee while considering the norms to hold the election shall take into account views of all four union active among the employees.

With these directions writ petition stands disposed of. Dasti.

December 01, 2006

SHIV NARAYAN DHINGRAJ

Kb
LPA 2007

….Appellant
Through Mr. Bijender Singh, Adv.

versus

BHARTIYA RAILWAY MAZDOOR SANGH …Respondent
Through Mr. B.K. Sinha, Adv.
Mr. S.S. Nehra, Mr. Rajendra Verma for the intervenors

CORAM:
HON’BLE THE CHIEF JUSTICE
HON’BLE MR. JUSTICE SANJIV KHANNA

ORDER
22.03.2007

Allowed subject to all just exceptions.
CM No. 542/2007 (condonation of delay)

There is one day’s delay in filing the present appeal by the UOI, the appellant.

For the reasons stated in the application, delay of one day in filing the appeal is condoned. Appeal is taken on record.

LPA No. 23/2007

The present appeal is filed by the Union of India challenging the legality of the order dated 01.12.2006, which was passed by the learned Single Judge after referring to the order of Supreme Court in Railway Board & Anr Vs. Southern Railway Mazdoor Union & Ors. Special Leave to
Appeal (Civil) No. 3716/2004 dated 08.3.2004. In the said order passed by
the Supreme Court, following observeration was made :

“ We see no reasons 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 versus
Food Corporation of India reported in AIR 1995 SC 1344 to hold that
the method was a natural, rationale and viable alternative.”

2. The learned Single Judge has also referred to the decision of the
Supreme Court in Food Corporation of India Staff Union Vs. Food
Corporation of India & Ors. Reported in 1995 Supp (1) Supreme Court
Cases 678.

3. The appellant is aggrieved by the impugned order in view of the
observations made by the learned Single Judge that requirement of 30%
membership is necessary for giving recognition to a Union. According
to the appellant, the appellant has an exclusive right to lay down the
conditions as to what should be the minimum requirement of
membership for getting recognition as a Union.

4. It is Submitted by learned counsel for the appellant has laid
down the criteria of 30% membership as the requirement for
recognition as a union. The said requirement was fixed by
notification dated 28.10.1985. Para 3 thereof refers to a letter of the
Railway Board dated 19.9.1961, wherein it was laid down that the minimum percentage of membership for granting recognition to a Union would be 15%. With the issuance of notification dated 28.10.1985, this minimum requirement was modified to 30% as recommended by Railway Reforms Committee. The notification dated 28.10.1985 was upheld by the Supreme Court in its aforesaid order dated 08.3.2004.

5. Subsequently, the appellant had circulated another notification dated 26.6.2002 wherein it stated that 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. Therefore, as per notification dated 26.6.2002 a Union must have a Membership of at least 30% of the non-Gazetted employees for getting recognition from the Railways.

6. It appears that the aforesaid criteria was proposed to be raised to 35% by issuing a draft resolution dated 18.8.2005. It is the admitted position that the aforesaid draft proposal was later on withdrawn by the appellant and, therefore, the requirement of 35% membership for a Union to get recognition has not been made applicable and implemented.

7. The prevailing position as of today is that a Union must have a membership of at least 30% of the non-gazetted employees so as to get
recognition from the Railways. It however, should not be construed that the aforesaid requirement cannot be changed or modified by the Railway, in accordance with law.

8. In view of the order passed today, consequential action shall be taken by the appellant for holding the elections. At this stage, learned counsel for the appellant that six months’ time may be granted to the appellant to hold elections in terms of the order of the learned single judge. We allow six months’ time in terms of the prayer.

Appeal and all the pending applications are disposed of.

CHIEF JUSTICE

SANJIV KHANNA, J

MARCH 22, 2007

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KULDIP SINGH, B.L. HANSARIA AND S.B. MAJMUDAR, JJ.

Food Corporation of India Staff Union, Appellant v. Food Corporation of India and others, Respondents.

Trade Union Act(16 of 1926), S.19 – Representative character of trade unions – Assessment Employer, Government undertaking and unions agreed to follow “Secret ballot system” – Tailoring of method of Secret ballot to yield correct result – Supreme Court laid down the procedure for holding elections.

Trade Union – Representative character – Assessment by secret ballot.(Para 6)

JUDGEMENT:- Collective bargaining is the principal raison d’etre of the trade unions. However, to see that the trade union, which takes up the matter concerning service conditions of the workmen truly represents the workmen employed in the establishment, the trade union is first required to get itself registered under the provisions of 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; the names and occupation of whose office bearers also become known. But when in an establishment, be it an industry or an undertaking, there are more than one registered trade unions, the question as to with whom the employer should negotiate or enter into bargaining assumes importance, because if the trade union claiming this right be one which has as its members minority of the workmen/employees, the settlement, even if any arrived between the employers and such a union, may not be acceptable to the majority and may not result in industrial peace. In such a situation with whom the employer should bargain, or to put it differently who should be the sole
bargaining agent, has been a matter of discussion and some dispute. The ‘check off system’ which once prevailed in this domain has lost its appeals; and so, efforts are on to find out which other system can foot the bill. The method of Secret ballot is being gradually accepted. All concerned would, however, like to see that this method is so adopted and adjusted that it reflects the correct position as regards membership of the different trade unions operating in one and the same industry, establishment or undertaking.

2. In the appeal at hand, the Food Corporation of India (FCI) and the unions representing the work men have agreed to follow the “secret ballot system” for assessing the representative character of the trade unions. We have, however, been called upon to lay down as to how the method of secret ballot should be tailored to yield the correct result. Keeping in view the importance of the said matter an order was passed as early as November 22, 1985 to issue notice and hear all the major all India trade union organizations on this aspect. Pursuant to this notice some trade unions’ organizations have appeared; and we have heard the learned counsel representing them, so also Shri Thakur, learned senior counsel appearing for the appellant.

3. Shri Khera appearing for one of the trade unions has brought to our notice instructions No. 25 of 1980 dated 18.12.1980 issued by the office of the Chief Labour Commissioner, Ministry of Labour, Government of India. This communication styled as ‘Memorandum’ had stated that on receipt of request either from the management or union for recognition of the union for the purpose at hand, its eligibility for recognition is first required to be examined, as stated in paragraph 3 in which mention has been made about collection of some preliminary data. After this has been done, the exercise of determination of the strength of all eligible unions is undertaken. This is decided through secret ballot. The Memorandum has laid down a detailed procedure in this regard. We have also on record a scheme which has been prepared by the appellant for assessment of representative
character of the trade unions through secret ballot system. This scheme is annexed to IA No. 1 of 1994.

4. We have perused the aforesaid documents. We direct that the following norms and procedure shall be followed for assessing the representative character of trade unions by the “secret ballot system”

ii) As agreed to by the parties the relative strength of all the eligible unions by way of secret ballot be determined under the overall supervision of the Chief Labour Commissioner (Central) (CLC).

iii) The CLC will notify the Returning Officer who shall conduct the election with the assistance of the FCI. The Returning Officer shall be an officer shall be an officer of the Government of India, Ministry of Labour.

iv) The CLC shall fix the month of election while the actual date/dates of election shall be fixed by the Returning Officer.

v) The Returning Officer shall require the FCI to furnish sufficient number of copies of the lists of all the employees/workers (categories III and IV) governed by the FCI (Staff) Regulations; 1971 borne on the rolls of the FCI as on the date indicated by the CLC. The list shall be prepared in the pro forma prescribed by the CLC. The said list shall constitute the voters list.

vi) The FCI shall display the voters list on the notice boards and other conspicuous places and shall also supply copies thereof to each of the unions for raising objections, if any. The unions will file the objections to the Returning Officer within the stipulated period and the decision of the Returning Officer shall be final.
vii) The FCI shall make necessary arrangement to:

(a) give wide publicity to the date/dates of elections by informing the unions and by affixing notices on the notice board and also at other conspicuous places for the information of all the workers;

(b) print requisite number of ballot papers in the pro forma prescribed by the CLC incorporating therein the names of all the participating unions in an alphabetical order after ascertaining different symbols of respective unions;

(c) the ballot papers would be prepared in the pro forma prescribed by the CLC in Hindi/English and the concerned regional language;

(d) set up requisite number of polling stations and booths near the premises where the workers normally work; and

(e) provide ballot boxes with requisite stationery, boards, sealing wax etc.

viii) The Returning Officer shall nominate Presiding Officer for each of the polling station/booth with requisite number of polling assistants to conduct the election in an impartial manner. The Presiding Officers and the polling assistants may be selected by the Returning Officer from amongst the officers of the FCI.

(ix) The election schedule indicating the dates for filing of nominations, scrutiny of nominations papers, withdrawal of nominations, polling, counting of votes and the declaration of results, shall be
prepared and notified by the Returning Officer in consultation with the FCI. The election schedule shall be notified by the Returning Officer well in advance and at least one month’s time shall be allowed to the contesting unions for canvassing before the date of filing the nominations.

x) To be eligible for participating in the election, the unions must have valid registration under the Trade Unions Act, 1926 for one year with an existing valid registration or the first day of filing of nomination.

xi) The Presiding Officer shall allow only one representative to be present at each polling station/booth as observer.

xii) At the time of polling, the polling assistant will first score out the name of the employee/workman who comes for voting from the master copy of the voters’ list and advise him thereafter to procure the secret ballot paper from the Presiding Officer.

xiii) The Presiding Officer will hand over the ballot paper to the workman/employee concerned after affixing his signatures thereon. The signatures of the workman/employee casting the vote shall also be obtained on the counterfoil of the ballot paper. He will ensure that the ballot paper is put inside the box in his presence after the voter is allowed to mark on the symbol of the candidate with the inked rubber stamp in camera. No employee/workman shall be allowed to cast his vote unless he produces his valid identity card before the presiding Officer concerned. In the even of non production of identity card due to any reason, the voter may bring in an authorization letter from his controlling officer certifying that the voter is the bona fide employee of the FCI.
xiv) After the close of the polling, the Presiding Officer shall furnish detailed ballot paper account in the pro forma prescribed by the CLC indicating total ballot papers received, ballot papers used, unused ballot papers available etc. to the Returning Officer.

xv) After the close of the polling, the ballot boxes will be opened and counted by the Returning Officer or his representative in the presence of the representative of each of the unions. All votes which are marked more than once, spoiled, cancelled or damaged etc. will not be taken into account as valid votes but a separate account will be kept thereof.

xvi) The contesting unions through their representatives present at the counting place may be allowed to file applications for re-counting of votes to the Returning Officer. The request would be considered by the Returning Officer and in a given case if he is satisfied that there is reason to do so he may permit recounting. However, no application for recounting shall be entertained after the results of the votes are declared.

xvii) The result of voting shall be compiled on the basis of valid votes polled in favour of each union in the pro forma prescribed by the CLC and signatures obtained thereon from the representatives of all the unions concerned as a proof of counting having been done in their presence.

xviii) After declaring the results on the basis of the votes polled in favour of each union by the Returning Officer, he will send a report of his findings to the CLC.

xix) The union/unions obtaining the highest number of votes in the process of election shall be given
recognition by the FCI for a period of five years from the date of the conferment of the recognition.

xx) It would be open to the contesting unions to object to the result of the election or any illegality or material irregularity which might have been committed during the election. Before the Returning Officer such objection can only be raised after the election is over. The objection shall be heard by the CLC and dispose of within 30 days of the filing of the same. The decision of the CLC shall be final subject to challenge before a competent court, if permitted under law.

5) It would be open to the CLC to deal with any situation not covered by the procedure detailed above. He may do so in consultation with the Returning Officer and the FCI.

6) We direct the CLC and the FCI to hold the elections in accordance with the procedure prescribed by this order. This may be done before April 30, 1995. The appeal and the writ petition are disposed of in the above terms. No costs.

Order accordingly.