



Shankar Divate, Seeraj Bagga, Ms. S. Bagga Y.P. Rao, P.S. Khera R.C. Verma, S.K. Bhattacharya, S.R. Bhat, Ms. Madhu Moolchandani, M.M. Kashyap, P. Gaur, Hathi & Co. (Nobody present) and A.K. Agrawal for the appearing parties. Respondent in-person (NP).

The following Order of the Court was delivered :

Collective bargaining is the principal *raison d'être* 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 unions, may not be acceptable to the majority and may not result in industrial peace. In such a situation with whom the employers 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 adapted 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.

In the appeal at hand, the Food Corporation of India (FCI) and the unions representing the workmen 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 on November 22, 1985 to issue notice and hear all the major all India trade

A union organisations on this aspect. Pursuant to this notice some trade unions' organisations have appeared; and we have heard the learned counsel representing them, so also Shri Thakur, learned senior counsel appearing for the appellant.

B Shri Khera appearing for one of the trade unions has brought to our notice instruction No. 25 of 1980 dated 18.12.80 issued by the Office of the Chief Labour Commissioner, Ministry of Labour, Government of India. This communication styled as 'Memorandum' has 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.

D We have perused the aforesaid documents. We direct that the following norms and procedure shall be following for assessing the representative character of trade unions by the "secret ballot system":

E (i) 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).

F (ii) 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 of the Government of India, Ministry of Labour.

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

H (iv) The Returning Officer shall require the FCI to furnish sufficient number of copies of the lists of all the employees/works (category 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 proforma prescribed by the CLC. The said list shall constitute the

voters list.

(v) 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.

(vi) The FCI shall make necessary arrangements to :

(a) give wide publicity to the date/dates of election 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 proforma 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 proforma 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.

(vii) 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.

(viii) The election schedule indicating the dates for filing of nominations, scrutiny of nomination 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

A canvassing before the date of filing the nominations.

(ix) 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 on the first day of filing of nomination.

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

(xi) 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.

C (xii) 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 event of non production of identity card due to any reason, the voter may bring in an authorisation letter from his controlling officer certifying that the voter is the *bona fide* employee of the FCI.

D (xiii) After the close of the polling, the Presiding Officer shall furnish detailed ballot paper account in the proforma prescribed by the CLC indicating total ballot papers received, ballot papers used, unused ballot papers available etc. to the Returning Officer.

E (xiv) 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.

F (xv) 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 G Returning Officer and in a give case if he is satisfied that there is reason H

to do so he may permit recounting. However, no application for recounting shall be entertained after the results of the votes are declared. A

(xvi) The result of voting shall be compiled on the basis of valid votes polled in favour of each union in the proforma 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. B

(xvii) 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.

(xviii) 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. C

(xix) 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 disposed 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. D

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. E

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. F

A.G.

Appeal and petition disposed of.