

GENERAL SECRETARY ROURKELA SRAMIK SANGH

v.

ROURKELA MAZDOOR SABHA AND ORS.

APRIL 16, 1991

[K.N. SINGH AND P.B. SAWANT, JJ.]

*Labour Law: Code of Discipline—Implementation Machinery—
State Labour Commission—Verification Officer—Who is.*

The appellant, Rourkela Sramik Sangh, is a trade union in the Rourkela Steel Plant. It addressed a letter to the Implementation and Evaluation Officer-cum-Labour Commissioner, under the Code of Discipline 1958, whereby it sought recognition as the sole bargaining agent in the Rourkela Steel Plant. For this purpose, it requested the Labour Commissioner to pass orders for immediate verification of the membership of all the trade unions operating in the Plant and to recommend for recognition of the union having majority of the membership. The Labour Commissioner as the Implementation and Evaluation Officer authorised the Deputy Labour Commissioner to carry out the process of verification of the membership of the registered trade unions, who in turn passed orders calling upon the different trade unions to produce the necessary records.

The 1st respondent—Rourkela Mazdoor Sabha—which is a rival union, challenged by way of a writ petition the orders passed by the Labour Commissioner and the Deputy Labour Commissioner. At the same time, the appellant union filed a writ petition seeking a direction to the Labour Commissioner, and the Deputy Labour Commissioner, to complete the process of verification and recognition within a stipulated time.

The High Court by its common judgment allowed the 1st respondent's petition and dismissed the appellant's petition. The High Court held that since the appellant-Union had addressed its application for recognition not to the Implementation Machinery but to the Implementation Officer, the same was not properly made as the Implementation Officer had no authority to initiate the process of recognition. The decision of the High Court was based on the finding that the Implementation and Evaluation Officer was not the "Implementation Machinery" within the meaning of the Code of Discipline.

A **Allowing the appeal and directing the Deputy Labour Commissioner and the Labour Commissioner to complete the proceedings of recognition as expeditiously as possible, this Court,**

B **HELD: (1) The “Implementation Machinery” envisaged in section 11 of the Code of Discipline consists of two separate Organisations, viz., Implementation Units in the respective Labour Departments, and Tripartite Implementation Committees at the Central, State and local levels. Each of the Organisations has been assigned different functions and they are independent of each other while carrying out the same. Thus, the constitutions of the Implementation units and Implementation Committee, are different and they function in different areas. [406H-407D]**

C **(2) Since the Implementation Unit/Implementation Officer entrusted with the task of granting recognition to the unions in the State of Orissa was the Labour Commissioner of the State, the appellant-Sangh had rightly approached the Labour Commissioner for the purpose. [409A]**

D **(3) Since the State Labour Commissioner was named as the Implementation Officer who is none but the officer in charge of the Implementation Unit, the State Labour Commissioner as the Implementation Officer has an option either to carry out the verification of membership himself or to entrust it to some other officer like the Deputy Labour Commissioner as in the present case. That was only an entrustment of a ministerial work. [409D]**

E **(4) The Deputy Labour Commissioner in the present case is the Verification Officer and under clause (10) of Appendix IV, he has to send his report to the Implementation Officer or Unit, i.e., the State Labour Commissioner, and the State Labour Commissioner will in turn communicate his decision as the State Implementation Machinery to the management as well as the Unions. [409E]**

F **(5) The High Court was wrong in holding that the Implementation Unit or the Labour Commissioner was not the “Implementation Machinery” but only a Verification Officer. [409C]**

G **CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1824 of 1991.**

H **From the Judgment and Order dated 14.5.1990 of the Orissa High Court in O.J.C. No. 4426 of 1989.**

Shanti Bhushan and Prashant Bhushan for the Appellant.

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Gobind Das, S.B. Upadhyay, Harish Salve, Ms. Kirti Misra and S.R. Grover for the Respondents.

The Judgment of the Court was delivered by

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SAWANT, J. Leave granted.

2. The only question which falls for consideration in the present case is-what is the meaning of "Implementation Machinery" within the meaning of the Code of Discipline (hereinafter referred to as the "Code") ratified by all Central Employers' and Workers' Organisations at the 16th session of the Indian Labour Conference held in May 1958 and which came into force from June 1, 1958. The question assumes importance in the present case because the High Court by the impugned decision has held that since the appellant-Union had addressed its application for recognition not to the Implementation Machinery but to the Implementation Officer, the same was not properly made and the Implementation Officer had no authority to initiate the process of recognition.

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3. The admitted facts are that the appellant Rourkela Sramik Sangh had addressed a letter on October 9, 1989 to the Implementation and Evaluation Officer-cum-Labour Commissioner-Orissa, Cuttack intimating him that as per the Code it had called upon the Rourkela Steel Plant to recognise it as the sole bargaining agent in the Plant, but that the Plant had not replied to the same. The appellant in the said letter had further requested the Labour Commissioner to pass orders for immediate verification of the membership of all the trade unions operating in the said Plant and to recommend for recognition, the Union having majority of the membership. On receipt of this request, the Labour Commissioner as the Implementation and Evaluation Officer authorised the Deputy Labour Commissioner on December 5, 1989 to carry out the process of verification of the membership of the registered trade unions. In pursuance of the same, the Deputy Labour Commissioner passed an order on December 14, 1989 calling upon the different trade unions to produce the necessary records within 10 days of the receipt of the notice. These orders passed by the Labour Commissioner and Deputy Labour Commissioner were challenged by the 1st respondent-Rourkela Mazdoor Sabha which is a rival union in the Plant by way of a Writ Petition being OJC No. 4426 of 1989 in the High Court of Orissa. At the same time, the appellant-

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A Union filed a Writ Petition being OJC No. 361 of 1990 seeking a direction to the Labour Commissioner, and the Deputy Labour Commissioner to complete the verification of the membership of the Unions and to fix a time-limit to complete the process and recognition and for ancillary reliefs. Both the writ petitions were heard together by a Division Bench of the High Court and by its impugned common judgment, the Court was pleased to allow the 1st respondent's petition and dismiss the appellant's petition. The decision of the Court was based only on the finding that the Implementation and Evaluation Officer was not the "Implementation Machinery" under the Code and the Implementation Officer had no authority to process the application for recognition.

C 4. The relevant provisions of the Code are as follows:

Section II of the Code deals with "Implementation Machinery" and is headed as such. It begins as follows:

D "2. To implement the Code of Discipline, labour enactments, awards and agreements, a separate machinery has been set up at the Centre and in all States. This machinery comprises:

(a) implementation units in Labour Departments, and

E (b) tripartite implementation committees at the Central, State and local levels."

Thereafter it proceeds to deal with Implementation Units and states as follows:

F "(i) Implementation Units:

3. A Central Implementation and Evaluation Division has been set up in the Ministry of Labour and Employment under the charge of a Joint Secretary. In the States also, Implementation Units have been set up under the charge of either a whole-time officer of the Labour Department or of the State Labour Commissioners. According to the recommendations of the Labour Ministers' Conference held in January, 1960 the Implementation Officer in each State should, as far as possible, be whole-time and of sufficient seniority. The following functions have been assigned to

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Implementation Units:

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(1) to ensure Implementation of the Code of Discipline, Code of Conduct, labour enactments, awards, agreements, etc., with a view to reducing at the source the main cause of industrial strife;

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(2) to supplement the work of the Industrial Relations Machinery in taking preventive action where disputes are brewing and in settling long pending disputes which could not be settled otherwise;

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(3) to maintain liaison with Central, State or local units, as the case may be, to ensure effective working of the implementation machinery;

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(4) to arrange meetings of Implementation Committees and to function as their Secretariat;

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(5) to bring about out-of-court settlement of cases pending in High Courts and the Supreme Court;

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(6) to ensure that cases are screened by the Screening Committees set up by the Central Employers' and Workers' Organisations before appeals are filed in higher courts;

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(7) to evaluate;

(a) major strikes, lock-outs and disputes in order to fix responsibility for them, and

(b) the working of important labour legislations, awards, policies, decisions, etc. in order to see how far they have produced the results which they were intended to produce and suggest measures to improve them.

(8) to collect and maintain necessary statistics regarding implementation of the Code of Discipline, labour enactments awards etc.

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It then deals with Implementation Committees and states as follows:

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A “(iii) Implementation Committees:

B 6. The Implementation Committees at the Centre and in
C the States represent both Central Employers’ and Work-
D ers’ Organisations. The Central Implementation and
Evaluation Committee consists of an equal number of
employers’ and workers’ representatives-four each from
the Central employers’ and workers’ organisations. They
are nominated by the organisations to which they belong
and not by Government. State/Administration Implemen-
tation Committees are also required to be constituted in
consultation with the Central Employers’ and Workers’
Organisations wherever they have affiliates in the States/
Territories concerned. These Committees are presided
over as far as possible by respective Labour Ministers. At
the local level, the Committees comprise an equal number
of representatives of employers and workers in the area
and are presided over by an officer of the Labour Depart-
ment or by a prominent person in the region.

7. The functions assigned to Implementation Committees
by the Standing Labour Committee in October, 1957 and
other Committees are as follows:—

E (1) to examine the extent of implementation of agree-
ments, awards and settlements and to advise the parties
which are anxious to implement an award but are unable to
do so, as to how the difficulties in implementation could be
overcome.

F (2) to fix responsibility for violations of the Code in cases
brought to its notice by the Implementation Unit or in
those enquired into by it or a sub-committee appointed by
it. In doing so, the Committee may hear the parties con-
cerned, if considered necessary.

G (3) To consider cases for out-of-court settlement with the
consent of the parties, screening of cases of industrial dis-
putes before appeals are filed, etc. that may be brought to
its notice by the Implementation Unit or such other cases
that the Committee may desire, to bring about harmonious
labour—management relations.

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(4) to review periodically the working of the Code in their respective spheres. A

(5) to maintain a two-way exchange of experience between the Committees at the lowest level and the Central Committee. All points of importance arising at any level should be given wide circulation." B

The Code further assigns the Implementation Units among others the duty to provide the secretariat for the Implementation Committees and to ensure that their decisions are implemented promptly. We have also seen from the enumeration of the functions of the Implementation Units above, that the Units have to arrange meetings of the Implementation Committees and to function as their secretariat. C

5. Section IV of the Code provides for "Grievance Procedure". It states, among other things, that it is the responsibility of the Central and State/Administration Implementation Units to ensure that a grievance procedure is set up by every management in consultation with their workers. D

6. Section V of the Code deals with Recognition of Unions and states as follows:

"11. Except in those States where the procedure to confer recognition on unions is governed by a statute the conditions and procedure for recognitions of unions are governed by the provisions of the Code of Discipline. It is the responsibility of Implementation Units to ensure that recognition is granted to unions by managements wherever they satisfy the prescribed criteria. The procedure to be followed for this purpose is at Appendix IV. For the sake of uniformity the State Implementation Units are requested to adopt it." E F

Appendix IV which is referred to above is headed as follows: G

"PROCEDURE FOR VERIFICATION OF MEMBERSHIP OF UNIONS FOR THE PURPOSE OF RECOGNITION UNDER THE CODE OF DISCIPLINE"

It is not necessary to set out the entire procedure stated in the said Appendix. A reference to only first two clauses and clause (10) of the H

A said procedure would suffice for our purpose. They state follows:

“(1) On receipt of a representation from a union for recognition under the Code of Discipline, the Central/State Implementation Machinery will first ascertain:

B (a) the names of unions functioning in the establishment together with their number and date of registration by reference to the Registrar of Trade Unions concerned;

C (b) whether any of the unions functioning in the establishment was responsible for an established breach of the Code during the past one year. (By an ‘established breach of the Code’ is meant a breach reported to and on enquiry established by the Implementation Machinery of the State or the Centre),

D (c) whether the existing recognised union, if any, has completed a period of two years of recognition.

E (2) After ascertaining the above facts, the Implementation Machinery at the Centre will request the Chief Labour Commissioner to arrange verification of membership of unions entitled to recognition under the Code. In the States, either the Implementation Officer will carry out this verification or get it done through the State Labour Commissioner, depending on the practice in each State.

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F (10) The verification officer will report his findings to the Central/State Implementation Machinery which in turn will communicate its decision to the management as well as to the unions. In his report the verification officer will also indicate the total number of workers in the establishment and the percentage of the verified membership to it.”

G We may also mention in this context that Annexure I to the Code lays down a criteria for recognition of unions.

H 7. It will thus be apparent from the aforesaid provisions of the Code that the “Implementation Machinery” envisaged by the Code consists of two separate Organisations, viz., Implementation Units in

the respective Labour Departments, and Tripartite Implementation Committees at the Central, State and local levels. Each of the Organisations has been assigned different functions and they are independent of each other while carrying out the same. While the Central Implementation and Evaluation Division is set up in the Ministry of Labour and Employment under the charge of a Joint Secretary, the Implementation Units in the States are set up under the charge of a whole-time officer of the Labour Department. It is recommended that the Implementation Officer should be a whole-time officer and of sufficient seniority as far as possible. The Implementation Units have, among other things, been entrusted with the task of ensuring that every management sets up a grievance procedure in consultation with their workers and ensuring that recognition is granted to Unions by management wherever they satisfy the prescribed criteria by following the procedure laid down for the purpose in Appendix IV. We have already pointed out that the prescribed criteria is laid down in Annexure I of the Code. Further pre-conditions for recognition are laid down in clause (1) of Appendix IV. Thus the constitutions of the Implementation Units and Implementation Committees are different and they function in different areas.

8. It appears that the High Court has basically been swayed by the fact that in clause (1) of the Appendix IV it is stated that on the receipt of the representation from unions for recognition, the Central/State "Implementation Machinery" will first ascertain the facts stated in sub-clauses (a), (b) and (c) thereof and thereafter, if at the Centre the "Implementation Machinery" will require the Chief Labour Commissioner to arrange the verification of membership of unions entitled to recognition and if in the States either the Implementation Officer will carry out the verification or get it done through the State Labour Commissioner depending upon the practice obtaining in each State. The High Court also seems to have been influenced by the provisions of clause (10) of the said Appendix which requires the Verification Officer to report his findings on membership to the Centre/State "Implementation Machinery". The High Court has obviously mistaken the whole for the part. As we have pointed out earlier, although Section II of the Code is headed "Implementation Machinery" the "Implementation Machinery" consists of two separate Organisations, viz., Implementation Units and Tripartite Implementation Committees. This is obvious from the language of Section II itself. Their separate constitutions and functions also make this aspect clear. What is further, to hold that the Implementation Unit in the respective Labour Department together with the respective Tripartite Implemen-

A tation Committee at the Central, State or Local Level would constitute the Implementation Machinery jointly and not each of them separately would run not only counter to the intention of the Code as is manifest from the clear language of Section II and their separate composition and functions, but would also be impracticable in working. We have reproduced above the composition of the Implementation Committees at the Centre and the State Level. These Committees consist of, at the central level, an equal number of employers' and workers' representation-four each from the central Employers' and Workers' Organisations as nominated by the Organisations themselves. At the State level, they are required to be constituted similarly and in consultation with the Central Employers' and Workers' Organisations wherever they have affiliates in the States concerned. The Committees are further presided over as far as possible by respective Labour Ministers and even where it is not possible for Labour Minister to preside over them, they have to associate themselves as much as possible with the deliberation of the Committees. At the local level, the Committees are similarly constituted of an equal number of representatives of the employers' and Workers' in the area and are presided over by an Officer of the Labour Department or by a prominent person in the region. In a given case there may be more associations than one of employers and employees, and the Committees would thus consist of an unwieldy number. To except such a Committee to carry out the work mentioned in Appendix IV is unrealistic. That is why the Code itself has entrusted to the Implementation Units and not to the Implementation Committees the task of ensuring that recognition is granted to unions by management. At the Centre, the Implementation Unit is kept in charge of a Joint Secretary and at the State level it is in charge of a whole-time officer of the State Labour Department.

F 9. The record further shows that as early as on May 26, 1959, i.e., after about a year of the ratification of the Code, the Government of India issued a statement naming and designating Officers Incharge of Evaluation and Implementation work in all the States and further stated as follows:

G " It is requested that all complaints of non-implementation of Labour Laws, awards, settlements, agreements, Code of Discipline etc., relating to undertakings in the State sphere may kindly be referred, in future, to State Implementation Officers concerned "

H So far as the State of Orissa is concerned, the Implementation

Officer named by the Government of India is the Labour Commissioner of the State. Since the Implementation Unit/Implementation Officer entrusted with the task of granting recognition to the Unions in the State of Orissa was the Labour Commissioner of the State, the appellant-Sangh had rightly approached the Labour Commissioner for the purpose. The High Court having committed the basic error of confusing the Implementation unit and Tripartite Implementation Committee together with the Implementation Machinery was misled into holding that the Implementation Unit/Implementation Officer was not the proper authority to initiate the procedure for recognition.

The High Court was further wrong in holding that clause (10) of Appendix IV which mentions that the Verification Officer will report his findings to the Implementation Machinery conveyed the meaning that the Implementation Unit or the Labour Commissioner was not the "Implementation Machinery" but only a Verification Officer. Since the State Labour Commissioner was named as the Implementation Officer who is none but the officer in-charge of the Implementation Unit, the State Labour Commissioner as the Implementation Officer had an option either to carry out the verification of membership himself or entrust it to some other Officer like the Deputy Labour Commissioner as in the present case. That was only an entrustment of a ministerial work. The Deputy Labour Commissioner in the present case is the Verification Officer and under clause (10) of Appendix IV, he has to send his report to the Implementation Officer or Unit, i.e., the State Labour Commissioner, and the State Labour Commissioner will in turn communicate his decision as the State Implementation Machinery to the management as well as the Unions.

10. For the aforesaid reasons we are of the view that the High Court has erred in allowing Writ Petition No. 4426 of 1989 filed by the 1st respondent and dismissing the apellant's Writ Petition being No. 361 of 1990. We, therefore, set aside the decision of the High Court and direct the Deputy Labour Commissioner to complete the process of verification of membership and the Labour Commissioner to complete the proceedings of recognition as expeditiously as possible and preferably within four months from the receipt of this decision.

In the circumstances of the case, the parties will bear their own costs.

R.S.S.

Appeal allowed.