

RESOLUTION

Patna, the 20th Phalgun, 1881(S)
11th March, 1959.

- Read:- Item 6 of the proceedings of the meeting held on the 13th and 14th April, 1951, of the Bihar Central (Standing) Labour Advisory Board regarding the growth of rival trade unions in one factory and the procedure for the registration, recognition and determination of their representative character.
- Read:- also the proceedings of the meeting of the Board held on the 22nd September, 1951 on the same subject;
- Read also the Government resolution No. II/T2-10209/51.L-510- dated 23rd January, 1952.
- Read also the decision arrived at in the Indian Labour Conference held at Nainital in May, 1958 laying down the criteria for recognition of trade unions.
- Read also the decisions arrived at the seventeenth meeting of the Bihar Central (Standing) Labour Advisory Board held on the 14th and 15th February, 1959 on the Code of Discipline in Industry.

RESOLUTION.- The following principles should be followed in dealing with the question of rival trade unions and their recognition:-

- (1) Where there is only ~~an~~ one registered union in an industry or establishment, that union must be recognised by the employer.
- (2) Where there are several unions in industry or establishment the one with the largest membership must be recognised, even if one of them fulfilled the membership conditions laid down in the criteria for recognition appended to the Code of Discipline.
- (3) Status quo should be maintained in the case of the unions which are at present registered and recognised unless their registration is cancelled by the Registrar of Trade Unions, in which case the recognition should be withdrawn.
- (4) A rival union can claim recognition only after it has functioned for at least one year at the particular establishment from the date of its registration under the Indian Trade Unions Act, 1926.
- (5) The employer should deal with all questions of general interest to the workers with the recognised union only provided that the employers shall not enter into any agreement with the recognised union about specific grievances of individual character of workmen who are not members of such registered unions as are not recognised:

Provided that this will not debar an unrecognised union from raising any question relating to the violation of the Code of Discipline or violation of this resolution or any award agreement with the Tripartite Standing Committee (Evaluation and Implementation).

- (6) Cases of individual workman, having no general application to others can be brought up before an employer by a registered union of which the workman is a member even though that union is not recognised and the employer shall negotiate with such registered trade union; in no case, however, will the employer enter into an agreement on the matters of general interest with a union which is not recognised.
- (7) When there is a dispute about the representative character of unions for the purposes of recognition the Labour Commissioner will try to determine as expeditiously as possible the representative character after taking into consideration the membership and such other evidence as may be produced before him. Voting by secret ballot will be taken only in extreme cases, and as a last resort. Voting, if necessary, will be restricted only to members of the registered unions and the rival union should secure at least 75% of the vote of all member workmen before it can dislodge the existing recognised union.

The following categories of workers should be excluded from exercising the ballot even though they may be enrolled as members of the union, namely:-

- (i) all the casual and temporary employees of less than 12 months' continuous service;
- (ii) any employee employed in place of a discharged one while the dispute regarding his discharge, if any, is pending settlement or disposal according to the provisions of law;

Provided that, once the Labour Commissioner is satisfied that the voting by secret ballot should be taken to determine the representative character of the rival unions, he may proceed in the manner indicated in this paragraph to take the vote notwithstanding any disagreement or non-participation of any of the parties to the dispute.

- (8) Recognition granted to a union as a result of xxx-voting in accordance with the procedure laid down in paragraph 7 of this resolution should not be disturbed for two years.
- (9) For withdrawing recognition of a union, the employers shall obtain the prior approval of the Tripartite Standing Committee (Evaluation and Implementation) whose decision in the matter shall be final.

Government trust that the employers and the employees will lend co-operation in solving the dispute regarding rival trade unions in the manner indicated above.

C. The Government resolution no. II/T2-10209/51-L-510, dated the 23rd January, 1952 is hereby repeated.

ORDER:- Ordered that a copy of the resolution be forwarded to all the registered trade unions and all the registered factories in the State as well as to the offices subordinate to the Commissioner of Labour, Bihar, and to the members of the Bihar Central (Standing) Labour Advisory Board.

Also ordered that the resolution be published in the Bihar Gazette for the information of the general public.

DALMIANAGAR MAZDOOR UNION

(Affiliated to All India Trade Union Congress)

Ref.No.DMU/Demands/5.

P.O.Dalmianagar, Shahabad,
(Bihar State).
The 12th April, 1965

EXPRESS DELIVERY

To

Sri S.K.Datta,
Dy. Commissioner of Labour,
Govt. of Bihar,
Department of Labour & Employment,
PATNA.

Subject:- Demands of Bonus, D.A. & Wage rise,
raised by this Union.

Reference: Your letter No. III/DL-1503/65(i) L.C.-
2190 dated 27.3.65 read with letter No.
III/DL-1503/65(i) L.C.-3247 dt. 7th April
1965.

Sir,

We thankfully acknowledge receipt of your letters
quoted above.

1. We once again lay stress on the fact that Dalmianagar Mazdoor Union has, in the situation precipitated here, rightly vindicated the vital and urgent cause of the workers by raising the above stated demands. We hope the Govt. shall not ignore the cogent and basic fact that the demands raised are adopted and supported by substantial and majority of workmen who also have given a clear mandate in favour of this Union to act on their behalf and secure a settlement by legitimate means. The Govt. shall also appreciate that by raising the demands, Dalmianagar Mazdoor Union has not acted against the spirit of the resolution, much less any labour laws, specially in the circumstances when the recognised but completely isolated union failed to stand by the workmen to speak for and protect their interests, rather it connives and conspires with the managements against the workmen to their greatest detriment. Could you kindly help us to understand what safeguard the resolution, sanctity of which has long ago been soiled by the employers and banking on which the recognised union has been betraying the workers interests, provides in case the recognised union failed to act for the workmen in time as is evident in the present instance? Assuming that answer for remedy in such an event would be to dislodge such a union, will it be then a practical and worthy suggestion to the workers to wait until such time the union is dislodged and remain in the lurch and be steamrolled by the rigid and exploiting managements. Further, what about the honourable implementation of the tripartite decision to link the dearness allowance with the cost of living index? Have the employers implemented it? If not, have Govt. compelled them to implement that moral commitment? It has to be kindly understood and appreciated that tripartite machineries and their decisions can survive on the principle of two way traffic. It will be too much now to expect from the workers to abide by such resolutions and decisions which the employers flout with impunity. Our view is that if the Govt., which is already massively armed with measure like DIR, want to save the resolution from its inevitable doom as also act legally and in a democratic way, must have to cast their weight on the side of workers against the mischievous and defaulting employers and where the recognised union acts as stooge of employers. Such an action in the case of Dalmianagar has been fully warranted by the circumstances. Alternatively, Govt. recognise and respect and even encourage the workers' efforts asserting their fundamental and democratic rights where they are faced with such adverse circumstances.

In our opinion such an attitude of the Govt, can be most appropriate in maintenance of industrial peace and harmony. can give a good rebuff to the union aligning with the management against the workers. Democle's sword must hang over the head of puppet union.

3. We have not been able to understand how our affiliation to AITUC agreeing to a resolution which does not provide an effective measure in emergent situation, besides it being clearly against the legal and fundamental rights of the workers and their union shall be binding on an affiliated union unilaterally and in totality. Affiliation to a central organisation is supposed to be a helpful and guiding instrument in securing workers rights and not to deprive them from the rights granted by Laws and the Constitution. If it so does, that being illegal, shall it be binding on the Union? The resolution in no way forbids a union to lead the workers and fight for their just cause where they apprehend to be betrayed or stand betrayed by a recognised puppet union.

4. In the circumstances stated above we earnestly urge the Govt. to re-examine and reconsider the matter in the positive direction and to the best interest of the workers.

Kindly acknowledge receipt. Thanking you,

Yours faithfully,

Sd/- Illegible
General Secretary.

In the High Court of Judicature at Patna

(Civil writ Judicial Jurisdiction).

C.N.J.C.No. 357 of 1965.

In the matter of a petition under Articles
226 and 227 of the Constitution of India

Lakhan Lall, General Secretary, Dalmianagar Mazdoor Union-Petitioner.

Versus.

The State of Bihar and others-

Respondents.

I n d e x.

S.No.	Particulars	P a g e s.
1.	Petition	1-11.
2.	Annexure A.	12-13
3.	Annexure B.	14
4.	Annexure C.	15
5.	Annexure D.	16-17
6.	Annexure E.	18
7.	Annexure F.	19
8.	Annexure G.	20

In the High Court of Judicature at Patna.

(Civil Writ Judicial Jurisdiction).

C.W.J.C.No.357 of 1965.

In the matter of an application under
Articles 226 and 227 of the Constitution of
India.

And

In the matter of

Lakhan Lall, General Secretary, Dalmianagar Mazdoor Union-Petitioner.

Versus.

1. The State of Bihar.
2. S.K.Chaturvedy, Under Secretary Department Labour and Employment,
Government of Bihar.
3. Works Director, Rohtas Industries Dalmianagar..... Respondents.

To

The Hon'ble Sri Ramaswamy Lakshmi Narasimham I.C.S.,
the Chief Justice of the High Court of Judicature at Patna and his
companion ~~xxxx~~ Justices of the said Hon'ble court.

The humble petition on behalf of the
above named petitioner,

Most respectfully sheweth:-

1. That a Wage Board for the workman of the Cement Industry
was appointed by the Government of India, Ministry of Labour
Employment by resolution No.W-B-6(5) dated the 2nd April, 1965.

2. That the term of Reference interalia was to determine the categories of employees (Manual, clerical, Supervisory etc.) who should be brought within the scope of the proposed wage fixation.

3. That the Board submitted its report fixing the grade, dearness allowance for operative and in paragraph 13.10,1 said as follows:-

"... Operatives who are already classified in grades A B.C D and E should be put into the new A, B.C.D. and E grades respectively. This should not be taken to preclude the Union concerned from restoring to the machinery provided by the Industrial Disputes Act, if it is dissatisfied by the Classification in the case of any operatives. Operatives who are not at present classified in this manner should be filled into the new grades on the basis of skill, suitability and experience. This should be done by the employers after consulting the Unions within three months of our recommendations coming into effect and should have ~~restros~~ restrospective effect. If the Union is dissatisfied the matter may be settled by Arbitration provided that two parties agree on the joint nomination of an arbitrator, failing this, the machinery provided by the Industrial Disputes Act would be available".

The report in paragraphs 13.11,1 said as follows:-

".... Every operatives who has put in atleast twelve months service when our recommendations come into effect should be given an increase of 5/- per month over the total wage payable to him (comprising basic wage payable to him (comprising basic wage, dearness allowance, house rent allowance or rent value of the house provided, if any, money value of grain concessions, if any, and any cash allowance of cash payments, personal of otherwise) for a full months normal working in the month immediately preceding that in which these recommendations take effect. In the case of pre-rated operatives, the basic wage mentioned above should be the basic wage payable on the standard minimum work load. The rent value of housing provided mentioned above should be calculated on the basic provided in para 13,14,1".

4. That when the respondent no.3 did not implement the recommendations of the Wage Board a meeting of the workmen was held on 3.10.1963 in which it was decided to raise the dispute regarding non-implementation of the recommendations of the Wage Board and in pursuance of that decision a demand was made for immediate implementation of the recommendations. The same meeting to represent the entire body of the workmen in pursuing the demands in accordance with law. The five workers were elected and authorised are:-

1. Shew Shanker Prasad,
2. Ram Egoal Singh,
3. Sridhar Dass,
4. Ramsarup andit,
5. Dwarikanath Singh.

5. That in pursuance of the authority the aforesaid five workmen supported by another four hundred & ninety workmen raised the demand and gave a copy of their demands to respondent no.3 and the Labour Officer, Government of Bihar Shahabad on 21.1.1965. A copy of the demand is annexed as Annexure A.

6. That as no action was taken on the demands the five workmen sent a letter dated 14.11.1963 to the Labour Officer, Government of Bihar intimating him of the position and requesting him to intervene in the disputed and hold conciliation at an early date the letter is marked as

Annexure B.

7. That a letter no.1626 dated 3.12.1963 was received by the five workmen from Sri V.V.Giri Labour Officer, Dalmianagar saying that the dispute cannot be taken notice of by the Department since it has not been raised by any Registered Trade Union; a copy of this letter is annexed as Annexure C.

8. That the five workmen sent reply to the Labour Superintendent, Government of Bihar, dated 31.12.1963 saying that the view taken by him as appears from Annexure C is erroneous in law in as much as disputes can be raised by body of workmen under the Industrial Disputes Act. The letter is made Annexure D.

9. That the Labour Superintendent by letter no.254 dated 20.1.1964 asked Sri Ram Bawal Singh one of the five aforesaid workmen to send a copy of the Judgement delivered by the Supreme Court laying the law that disputes could be raised by a body of workmen. The letter is marked as annexure 'E'.

10. That in pursuance of the demand copies of two Judgements (Associated Cement Co., Ltd., Porbandar vrs. their workmen and others decided on 15.6.1960 and 2 s State of Bihar and Kripa Shankar Jaiswal were sent on 4.2.1964).

11. That it will appear from what has been stated above that the dispute took a lengthy and complicated shape and it became unmanageable by the aforesaid five workmen as they did not have any organisation as such behind them, hence the aforesaid five workmen along with another 495 workmen authorised the Dalmianagar Mazdoor Union to fight for their demands. It may be mentioned that out of the aforesaid five hundred workmen most of them are members of this union.

12. That your petitioner informed of the development in his regard to the conciliation officer who held conciliation with your petitioner.

13. That since the management did not participate in the conciliation proceeding inspite of due notice the Conciliation Officer submitted a report to the Government.

14. That on 10.12.1964 your petitioner received memo.No. III/D1-15025/64 (i) L and E 11176 dated 9.12.1964 saying that the dispute could not be referred as it does not appear expedient to refer the dispute to adjudication the letter is marked as Annexure F.

15. That the reasons that the Government does not think expedient to refer the dispute is no reason in the eye of law and when the conciliation officer submits his report on the failure of conciliation it is the obligation of the Government to refer the matter for adjudication.

16. That in this case the respondent no.2 and respondent no.1 have refused to discharge the obligation, which in law they were bound, by refusing to refer the dispute.

17. That your petitioner wrote a letter dated 12.12.1964 to the respondent no.2 requesting him to give specific reason for such a decision of the Government. The letter is marked as Annexure 'G'

18. That so far your petitioner has received no reply from respondent no.2 and as such there is no other alternative but to file this application.

19. That this case has never come up to this court earlier at any stage.

It is, therefore prayed that your lordships will be pleased to admit this application, issued notice and after hearing both the sides issue a writ in the nature of Mandamus directing the respondent to refer the dispute for adjudication or pass such other order or orders as your lordships may deem fit and proper.

And for this the petitioner, as in duty bound shall ever pray.

Affidavit.

I, Dwarka Nath Singh son of Shyam Lal Singh, by caste Rajput by profession service, resident of Dalmianagar, P.S. Dehri, District Shahabad do hereby solemnly affirm and says as follows:-

1. That I am one of the workmen and member of the Executive Committee of the Dalmianagar Mazdoor Union and am well acquainted with the facts and circumstances of the case.

2. That the contents of this petition have been read over and explained to me in Hindi and I have understood the same and they are true to my knowledge.

.....

To

Sri I. Prasad

Commissioner of Labour

Bihar

Dear Sir,

Sub - Rights & responsibilities of unions
in respect of industrial disputes

With reference to your letter no

..... dt. I have to say
that we are not a party to the decision
of the 1951 of the Bihar central Labour
Advisory Board as the Bihar Govt did
not allow our representation in that
body at that time due to its discriminatory attitude.

On national level also we are not
now no longer a party to the decision
to that effect.

Bihar Govt is showing such a
discrimination against our affiliates
in respect of conciliation even in public
utility services like oil refinery, Baramuni
and in the respect of registration etc.
that the Code of discipline has been
made inoperative thoroughly. The
Bihar Labour Advisory has been

बिहार विधान सभा

It has not met for the last several years

made defunct by the ~~Code~~ Code is being used by the Govt mainly against the workers. There are industries like mica where 90% of the workmen have been made temporary, names of the workers are changed before the completion of three months so that there is break of service etc. but the labour Dept. refuses to act against the employers. At present not a single mica factory has paid the profit Bonus & this is against the Bonus Act but your department is totally ineffective where the Act ^{is violated} so violated what remains of the Code in Bihar?

Similarly the award of the Tribunal of Bihar remains unimplemented as in the case of Gindih Municipality. The Tribunal Commission's ^{recommendation} ~~recommendations~~ to the award of arbitrator in respect of Mr. Tanti etc but your Dept. does not act.

Anybody talking of violation of Code

Should first see that disputes are resolved expeditiously, but if takes years in Bihar to bring a decision.

It is said that this article of the award is not under consideration. It is the only legal provision like this.

Bihar State Committee

All India Trade Union Congress

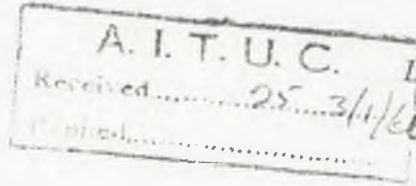
बिहार राज्य कमिटी

अखिल भारतीय ट्रेड यूनियन कांग्रेस

Langartoll, Patna-4

Ref. No.

127



Dated, the 20-12-1966

सेवा में,
मुख्य मंत्री,

बिहार सरकार, पटना ।

विषय: - टोरी खान दुर्घटना की जांच में कसूरदार पाये गये व्यक्तियों पर कार्रवाई ।

प्रिय महाशय,

इस पत्र के द्वारा मैं आपका ध्यान टोरी दुर्घटना की जांच की प्रकाशित रिपोर्ट की ओर खींचना चाहता हूँ और आपसे अनुरोध है कि दुर्घटना की विभिन्निका को देखते हुये उस कम्पनी के अधिकारियों को फॉरन गिरफ्तार किया जाय और उचित मुकदमा चलाया जाय । आपकी सरकार द्वारा इस संबंध में किसी तरह की देर अनुचित है ।

आपका -

प्रधान

बिहार राज्य कमिटी

प्रतिलिपि: -

१-केन्द्रीय श्रम मंत्री,

भारत सरकार, नई दिल्ली ।

२-अखिल भारतीय ट्रेड यूनियन

कांग्रेस नई दिल्ली ।

..1....

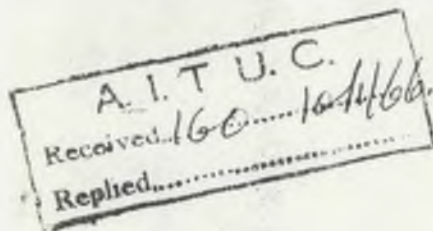
From

Shri I. Prasad,
Commissioner of Labour, Bihar.

To

The General Secretary,
All India Trade Union Congress,
(Bihar Branch)
Langertoli, Patna-4.

The General Secretary,
All India Trade Union Congress,
Rani Jhansi Road,
Jhandewala, NEW DELHI.



Patna, the 6th January, 1965

Subject:- Rights and responsibilities of Trade Unions
in respect of industrial disputes-

Sir,

I am directed to enclose a copy of letter No. DMV/Demands/5 dated the 12th April, 1965 received from the General Secretary, Dalmanagar Mazdoor Union, Dalmanagar, affiliated to the All India Trade Union Congress for your information.

2. You may be aware that a procedure dealing with industrial disputes raised by the Trade Unions was evolved in 1951 on the basis of unanimous recommendations of the Bihar Central Labour Advisory Board, which is a tri-partite body consisting of representatives of the employers' and employees' Organisations and the Government, on which your organisation has also been represented. This procedure is quite in keeping with the procedure contained in the Code of Discipline in Industry as accepted at National level. (A copy of the State Government Resolution No. III/DL-26014/59L-4650 dated the 11th March, 1959 is also enclosed for ready reference). According to this procedure, the registered and recognised unions only can raise disputes of general nature. A registered but unrecognised union is, however, competent to raise disputes of individual nature. In accordance with the said procedure, the State Conciliation Machinery takes up even individual disputes raised by the unrecognised union, and the State Government also exercise the powers under section 10 of the Industrial Disputes Act by referring such individual disputes to adjudication. As a matter of fact, numerous items of individual disputes, which the Dalmanagar Mazdoor Union could not get settled with the management, have been referred to adjudication.

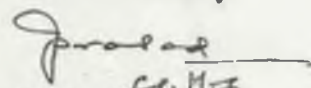
3. It has been noticed that the above procedure has been working well in the field of industrial relations in this State. Your affiliate, the Dalmanagar Mazdoor Union has assailed the said procedure and has questioned its propriety. Not only that, the union has attempted to dig at the very root of the procedure by filing a writ in the Patna High Court (a copy of the writ petition is enclosed for your information). It is not known whether this Union has been competently authorised by its parent organisation to take and adopt such a course.

4. You will agree that the success of tri-partite decisions, which are obviously obligatory, depend upon the parties abiding by such decisions. The recommendations of the Indian Labour Conferences, various Wage Boards and other tri-partite bodies are there which are respected by all concerned. You may also agree that the proper course for reversing any such decisions should be ~~to~~ ventilate it through the proper form, which, in the instant case, is the Bihar Central Labour Advisory Board.

5. These facts are brought to your notice so that your organisation may prevail upon its affiliate, the Dalmianagar Mazdoor Union, Dalmianagar to respect such tri-partite decisions and not to create unnecessary and avoidable situations in the field of industrial relations in this State, particularly at a time when our national integrity has been challenged by the renewing threats of aggressions posed by our two neighbours-China and Pakistan.

6. After your reply is received, it will be considered in the light of it, whether the matter should be placed before the Bihar Central Labour Advisory Board.

Yours faithfully,


(I. Prasad)

Commissioner of Labour, Bihar.

S. No. 5/1

← यहाँ काट कर खोलिये To open cut here →

अन्तर्देशीय पत्र
INLAND LETTER



Com. R. S. SRINASTAVA Secretary
ARI INDIA TRADE UNION Congress
S.E. Jhandewalan, RANIHARA
NEW-Delhi
Road

← तीसरा भाग Third fold →

भेजने वाले का नाम और पता :- Sender's name and address :-

Kedar DAS

134 HLA FLAT.

PATNA I

इस पत्र के अन्दर कुछ न रखिये NO ENCLOSURES ALLOWED

A. J. P. U. C. Patna
Received 3260 19/7/66 17-7-66
Registered

My dear K. S.

Many thanks for your

letter of 14th July 1966, received yesterday.

The Working Committee has been postponed - is welcomed - as physically it would not have been possible for me to attend it.

I have been advised by the doctor to be on bed for 3 weeks more - though I think I have improved a lot. However I shall have to abide by the instructions. I could not go to Jamshedpur - after my release and I am lying here - and in the meantime August 9th has been fixed as Bihar Bazaar - by the United front of 6 parties of Bihar. Bihar Govt. it appears is ready to its scheme of repression, mass

Please convey my good wishes to Bhaskarjya, Parshad, K. S. Dasgupta, and to all.

anxiety etc and I am ^{so} confident
that I may be taken to custody
before I see my people at Jankpur
It appears it cannot be avoided.
However I do not mind. I shall be
ready to face the consequences.

I am sorry at heart
that my remarks in my previous
letter has pained you so much.

You know I write to
you often and to Com. Wang and
often and I do not feel shy to
express my feelings and sentiments
to you, which I consider, I must.

I would have been
glad to retire from the office-bearing
post of ALTUC - and some new
comrades should have been elected
in my place. I continue line 1957
and how long should I continue
this post of honor - which in
practice is simply decorative and
nothing else. I speak to you very

If I had I been there I would
withdraw my name to give
to a new comrade or any other,
but unfortunately I was in jail and
was a Bihar comrade - had the courage
to be before Martyr for AITUC delegation
I was left helpless. I do not like to
to stress on this point but the
opinions expressed by one of the
leaders of AITUC (named ^{me}) to scold
grounds of removing me. I am aware
of ^{my} abilities and I have done no work
of AITUC and I feel guilty why
should I be there to decorate myself.

I have several times
received financial help from AITUC
whenever I was in need and I am thank-
ful to you all - both personally and
for I.H.U. So the question of bribery
does not arise. At present I did not
need it and had expressed my
annoyance at the treatment meted
out to me - hence I spoke to you
my mind - there is no secret behind.
However if it has pained please
excuse me and write to me. Now I am
outside jail so it is difficult to keep pace
of I.H.U. sent. Reso. n. 1400 - to see you both
Yours Kanchan