



OIL & NATURAL GAS CORPORATION (WOU) KARMACHARI SANGHATANA

AFFILIATED TO - PETROLEUM & GAS WORKERS' FEDERATION OF INDIA

Reg. No. (By - II - 8268)

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Website : www.ksmumbai.com

REF. : ONGC/KS/ 99 /2023

DATE : 08/08/2023

To,
The Returning Officer
&
Deputy Chief Labour Commissioner (CL) Mumbai
Shramraksha Bhavan, First Floor,
Shivshrushti Road,
Sion, (East),
Mumbai- 400022

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Subject: Submission of objections raised by our union in the voter list

Respected Sir,

With reference to provisional voter list submitted by ONGC management on 1st August 2023 for the secret ballot election in WOU, we hereby submit to include the names of **Direct Employees and Tenure Base employees** in the voter list:

I. Names of the Direct Employees to be included

The names of direct employees who are on the pay roll of ONGC, WOU are to be added in existing voter list submitted by ONGC. It is also submitted that all direct employees are having CPF No., Identity Card of ONGC and they have casted their votes for the past Six Secret Ballot elections conducted by your authority in ONGC, WOU.

II. Names of Tenure Base Employees is also to be included

At the outset Tenure Base Employees cannot be categorised under any definition of contract employees as they are not engaged under any contractor and also they have casted their votes in the last six elections as they are having employee number (CPF) and identity cards issued by ONGC management as similar to regular employees. These Tenure Base Employees are directly recruited by ONGC, Mumbai Region adhering strictly recruitment rules and regulations of ONGC.

All the above objections are to be considered and rectified in the final voter list.

Your esteemed authority is requested to kindly give direction to the ONGC to include the names of the **Direct and Tenure Base Employees** in the existing list submitted by ONGC so that they are able to cast their votes in the coming Secret Ballot election also.

Thanking you,
Yours faithfully,


(Pradeep Mayekar)
General Secretary

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प्राप्त
RECEIVED

08/08/2023
उप मुख्य श्रमायुक्त (किन्हीके) कार्यालय
Office of the Dy. Chief Labour Commissioner (O)
मुंबई / Mumbai



Govt. of India,
Ministry of Labour & Employment,
Office of Dy. Chief Labour Commissioner (Central),
Shramraksha Bhawan, Sion - East,
Mumbai - 400 022.

No. B-11(01)/2022-Vfn.ONGC.

Date: 10.08.2023

Minutes of the meeting held before the Returning Officer & Dy. Chief Labour Commissioner (C), Mumbai on 10.08.2023 to discuss & finalize the voters list in respect of secret ballot election to be held in ONGC Ltd. from 29.08.2023 to 14.09.2023 & voting on 15.09.2023.

Attendance Sheet is attached on separate sheet.

As scheduled the management of ONGC submitted the voters list on 01.08.2023 endorsing a copy thereof to all the participating Unions. Participating Unions filed their objection by 08.08.2023. The objections were about to categories of employees whose names were not included in the voters list dated 01.08.2023 i.e. direct employees and tenure based employees. **Further, both the unions also raised an issue with regard to employees who are directed by the management in emergency to undertake certain job and as a result he/she is not available for voting on the date of election on scheduled booth, must be given opportunity to cast his/ her vote at helibase offshore booth where the election will continue for consecutive 17 days (Marked as X).** Accordingly the matter needed due arguments with substantive evidence and hence the present meeting.

During the course of discussion in the matter following facts emerged:-

1. Regarding Direct Employees

Management views :

- A. Direct employees cannot be placed at par with regular employees in terms of Office Order No. 20(1)/97-IR dated 22.01.2010 (the letter is taken on record and marked as 'M-1' for future references).
- B. The management quoted Order of Hon'ble High Court Bombay in LPA No. 337 of 2011 Dated 05.06.2023 wherein conclusion of Tribunal as well as Learned Single Judge were quashed and set aside (taken on record and marked and 'M-2' for future references). The management claims that now they must not be included in the list of Voters for the purpose of present election.
- C. The management also submitted that direct employees are not included in Central Pay Roll like regular employees. The payment of direct employees are carried out by the respective establishment i.e. Nhava, Uran, Panvel etc., by taking sanction for a year and therefore they are not entitled for voting.

Unions Views :

- A. In reply to the point A above, both the participant Unions informed that after Order in question i.e. 22.01.2010 all the direct employees are allowed to cast their votes in last 2 elections and therefore raising this question at this point of time is irrelevant.

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- B. Both the Unions filed an Order of Hon'ble Supreme Court in SLP (C) No. 16110/2023 dated 04.08.2023 (the order is taken on record and marked as 'U-1' for future references). As per Order Para 61 of the Order of Hon'ble High Court Bombay in LPA No. 337 of 2011(M-2) shall continue to operate. It means the Order in LPA No. 337 of 2011 has not yet been operative.
- C. So far as Pay Roll is concerned, there is no categorization of pay rolls as central pay roll or regional pay roll or sectional pay roll etc. The management may prepare separate pay rolls as per their administrative convenience. As per Notification in the light of which this election is being conducted, only the word 'pay roll' is used. As such it hardly makes any difference whether the pay roll is prepared section wise or not and hence, direct employees cannot be debarred from their fundamental right of vote.
- D. Union placed on record an Office Order of ONGC bearing No. MRBC/IR/VI(40)/98 dated 09.09.1998 (the letter is taken on record and marked as 'U-2' for future references). As per Order all the direct employees who have identity card are allowed to vote in election conducted to decide majority Union.

Conclusion:-

Heard arguments of both the parties after taking the evidences placed on record as above. So far U-2 is concerned, the management enlightened that U-2 is an Order of 1998 whereas M-1 is the Order of 2010. Needless to mention M-1 supersedes the contents in U-2 and therefore fit to be treated as null and void.

At this juncture the most important issue is the meaning of "pay roll" which is used by the Ministry of Labour & Employment in its Notification dated 13.06.2023 through which Dy.CLC(C), Mumbai is declared as Returning Officer for the purpose of SBE to decide majority union in the establishment of ONGC (WOU) Mumbai. The notification nowhere makes any difference whether it is sectional pay roll or central pay roll. It is important to mention and decide what this word "pay roll" means.

At the outset it is important to mention that the word "pay roll" is not defined in ONGC Pay and Allowance Regulation, 1972. Obviously if the word is to be examined with legal application of mind, there is no alternative but to go for its general meaning as envisaged in dictionary. "Pay roll" as per oxford dictionary means "a list of people employed by a company showing the amount of money to be paid to each of them". As the present election is meant for permanent unionized employees, "pay roll" in this respect means the names borne on the "pay roll" of ONGC. Obviously it excludes contractual and other employees in respect of whom employer employee relationship is not in existence between the ONGC and the employees concerned.

As per the meaning above, "Pay roll" prepared by ONGC means any category of employees who are paid directly by ONGC enlisting them in a document as record of evidence for payment. Such document may be construed as "pay roll" for the purpose of election as used by the Ministry of Labour and Employment in its order dated 13.06.2023. Admittedly, the direct employees are paid directly by the ONGC making a "pay roll" in view of the direction of the Hon'ble High Court of Bombay. As such names of direct employees are also borne on "pay roll" of ONGC as on 1.07.2023.

In view of the definition of "pay roll" and in the light of order of Hon'ble High Court Bombay in Appeal lodging number 32 of 1997 before the division bench

in WP no 401 of 1996 and Appeal lodging number 33 of 1997 in WP No 1240 of 1996 read with order dated 4.09.1998 in WP no 1671 of 1998 (marked as U 3), direct employees as named in the establishment of ONGC on 1.07.2023 are allowed to be voter for the purpose of present SBE subject to outcome of SLP no 16110 of 2023.

2. Regarding Tenure Based Employees :

Management view:-

- a. Management referred M 1 above and pinpointed the second para which says that tenure employees are not regular employees and therefore they are not entitled to vote in the SBE in question.
- b. The SBE is conducted in the establishment of ONGC for the purpose of recognition of union as bargaining agent in respect of regular workmen only. Needless to mention, the tenure based employees is not regular workmen and therefore they are not entitled to cast their votes in such election.

Union View:-

- a. Both the unions simultaneously submitted that the recognized union raises the issue of tenure based employee along with regular employees in the Joint Council meeting (JCM) and management takes appropriate decisions on the basis of such meetings. Therefore, it is not correct on the part of management to submit that the recognized union is the bargaining agent in the establishment of ONGC only for regular workmen as envisaged in M 1 rather it includes the interest of tenure based employees as well.
- b. It is also the fact that the tenure based employees have been allowed to cast their votes in SBE in question during the last 2 consecutive elections even after issue of M 1. Therefore, it is irrelevant to submit at this stage that tenure based employees are not entitled to vote.

Conclusion:-

At the outset it is mentioned at this stage that the present SBE is nothing but to decide the majority union so that it may recognized as bargaining agent in order to protect the interest of workmen whom the bargaining agent is representing. During the course of argument the Ld. Representatives of unions put up a soft copy of Minutes of meetings with recognized unions held on 2nd February, 2023 at Kolkata. Though the documents is not taken on record its points no 1 (i) deals with extension of age limit in respect of tenure based employees from 50 to 60. Such deliberation and decisions in the meeting of recognized unions with management is evident that the bargaining agents so declared out of SBE represent the tenure based employees as well. Accordingly, if tenure based employees are not allowed to vote, the whole process of law may go against the basic structure of democracy and the statutory rights of the voter.

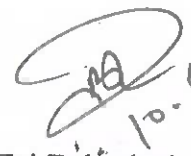
In view of the above tenure based employees are allowed to cast their votes in the present SBE.

The Management is directed to finalize the voter list in terms of the decision arrived at as above and publish on the scheduled date.

- 3. The 3rd objection/ question raised by unions above in X is also discussed and it is decided in public interest to allow such workmen to cast their vote. It is clarified that such set of workmen shall include only those workmen who are directed by management under emergency/ operational requirement and as a

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1.8.23

result he/ she could not be available for voting on his/ her booth on scheduled date.


10-8-27

(Tej Bahadur)
Returning Officer for ONGC SBS
& Dy.CLC(C), Mumbai