

(1980) 03 GUJ CK 0020
In the Gujarat High Court
Case No : Spl. C.A. No. 1197 of 1978

Adamji M. Badri and Others

APPELLANT

Vs

Labour Officer and Another

RESPONDENT

Date of Decision : 04-03-1980

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 7, 7

Citation : (1981) 1 LLJ 367

Hon'ble Judges : S.H. Sheth, J;A.M. Ahmadi, J

Bench : Division Bench

Judgement

S.H. Sheth, J.—The petitioner is a Cinema Exhibitor at Bharoch. During the first six months of 1975, he had employed 15 workmen. On 20th September, 1974, Surat Jilla Cinema Karmachari Mandal submitted to the petitioner charter of demands on behalf of the petitioner's workmen. The demands included the revision of wages, casual leave, sick leave and such other things. The petitioner negotiated with the union and the workmen and a settlement was reached on 7th March, 1975. It was signed by both the parties. Under the terms of that settlement, wages of the workmen were revised, gratuity under Payment of Gratuity Act, 1972, was agreed to, payment of bonus was agreed to and casual leave with right to accumulate it was also agreed to. It was a private settlement. A copy of that settlement was sent to Labour Officer and Conciliation Officer. Under S. 2(p) of the Industrial Disputes Act, 1947, it was sent for registration. On 21st December, 1976, Akhil Gujarat Kamdar Association served upon the petitioner a notice on behalf of the petitioner's workmen and demanded revision of wages, dearness allowance and other things. On 23rd April, 1977, all workmen employed by the petitioner resigned from Akhil Gujarat Karmachari Union and withdrew their demands. The workmen informed the Labour Officer and the petitioner accordingly. However, the petitioner gave further benefits to the workmen and those benefits were incorporated in the supplementary settlement arrived at between the parties on 30th May, 1977. The two settlements - one dated 7th March, 1975 and another dated 30th April, 1977 - were stipulated to

remain in force until 21st March, 1982. Copies of the subsequent settlement were sent to the Labour Officer, Assistant Commissioner of Labour and Secretary to the Education and Labour Department, Government of Gujarat. On 18th June, 1977, the Government called for the original settlement. The petitioner sent it to the Government. The settlement dated 30th April, 1977 was signed by all workmen. It was registered and returned to the petitioner.

2. On 13th September, 1977. Bharoach District Cinema Employees Union respondent No. 2 served upon the petitioner a strike notice under S. 22(1) of the Industrial Disputes Act, 1947. The union also made fresh demands. The union stated that if fresh demands were not granted by the petitioner, the workmen would go on strike. The petitioner in reply pleaded that there was in force a binding settlement within the meaning of S. 18 of the Industrial Disputes Act, 1947, and that it was to remain in force for five years, that is to say, until 31st March, 1982. The petitioner, therefore contended that since that settlement was subsisting and was in force, no demand on behalf of the workmen could be made. By letter dated 5th October, 1977, Government Labour Officer and Conciliation Officer respondent No. 1 called the parties to a preliminary discussion on 26th October, 1977 in this behalf. On 26th October, 1977, the petitioner submitted written contentions to respondent No. 1. He, inter alia, contended that the binding settlement within the meaning of S. 18 of the Industrial Disputes Act had been in force by virtue of the provisions of S. 19(2) of that Act and that it could not be terminated during its subsistence. He also contended that it could not be a subject-matter of industrial dispute. Therefore, according to him, the notice served on behalf of the workmen was illegal and inoperative. On 11th January, 1978, the union withdrew the notice dated 13th September, 1977 and, therefore, the conciliation proceedings were closed. However, on the same day, the union served upon the petitioner notice terminating the settlement dated 30th May, 1977. On 7th March, 1978, the petitioner replied to it and raised the same contentions which he had raised earlier. On 30th March, 1978, a fresh charter of demands was presented by the workmen to the petitioner. On 3rd April, 1978, the petitioner gave reply to the workmen's demands. By notice dated 15th April, 1978, respondent No. 1 called the parties for a preliminary discussion on 29th April, 1978, The petitioner filed his written submissions. He, inter alia, contended that respondent No. 1 had no authority to intimate the negotiations and that he could not admit the workmen's demands to conciliation. According to him, respondent No. 1 could not do so because the settlement dated 30th May, 1977 was binding upon the parties. However, respondent No. 1 admitted the workmen's demands to conciliation by notice dated 8th June, 1978.

3-4. The petitioner has, therefore, filled this petition in which he challenges the jurisdiction of the conciliation officer to admit the demands to conciliation. On behalf of the workmen, it is contended that the settlement dated 30th April, 1977 was obtained by the petitioner from them under force and fraud. The question, therefore, which has been raised for our consideration in this petition is

as follows :

Whether the Conciliation Officer has jurisdiction to admit demands of the workmen to conciliation during the operation of a registered private settlement between the management and workmen which is alleged to be vitiated by exercised of force and perpetration of fraud and which is, therefore, alleged to be involuntary.

5. On first principles, element of force in or involuntary character of a settlement means no settlement. Any settlement which is arrived at between two parties must be free and voluntary. Now, in the instant case, the workmen have presented a charter of demands to the petitioner which the conciliation officer has admitted to conciliation. Management pleads the operation of a registered private settlement between the parties which bars the jurisdiction of the conciliation officer to entertain any demands and prevents the workmen from raising fresh demands. It cannot be gainsaid that under such circumstances a conciliation officer cannot presume that the settlement which the management pleads and which the workmen allege to be involuntary and fraudulent is valid and binding nor can be presume that it is free and voluntary. In ordinary course, the management which pleads the operation of a valid and binding settlement should prove its validity and binding character. A mere allegation made by the management that it is valid, and binding cannot be taken to be a gospel truth or "ipse dixit". To do so is to defeat the principle of collective bargaining and all fine values of life.

6. Let us now see the contours of jurisdiction of the conciliation officer in this behalf.

7. We first turn to S. 7 of the Industrial Disputes Act, 1947, which provides that the appropriate Government may constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under the said Act. This provisions links the jurisdiction of the Labour Court to matters specified in the Second Schedule. Second Schedule to the Act species six matters. Whether a settlement which was arrived at, was vitiated by fraud or was involuntary does not fall under any of the first five items. Item 6 in the Second Schedule is a residuary item any reads thus; "All matters other than those specified in the Third Schedule." We are shortly referring to the Third Schedule.

8. Section 7-A provides that the appropriate Government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule. The Third Schedule to the Act enumerates eleven matters. First ten items specify wages, allowances, hours of work, leave, bonus, profit sharing, provident fund and gratuity, working of shifts, classification by grades, rules of discipline, rationalisation, retrenchment of workmen and closure of establishment. Whether

a settlement which was arrived at between an employer and his workmen was vitiated by fraud or was involuntary does not fall under any of the first ten items in the Third Schedule, Item 11 which is residuary item reads as follows :

"Any other matter that may be prescribed".

This residuary item has a limited circumference. It does not specify any other matter in general terms but specifies that any other matter that may be prescribed. Section 2(m) defines the expression "prescribed" so as to mean prescribed by rules made under the said Act. It is not in dispute that under the Industrial Disputes (Gujarat) Rules, 1966, investigation into the fraudulent or involuntary character of a settlement has not been prescribed as a matter falling within the jurisdiction of the Industrial Tribunal. It is clear, therefore, that investigation into such an allegation is not covered by the Third Schedule. In our opinion, it will be covered by the residuary item in the Second Schedule. Under S. 7-A, the State Government has the jurisdiction to refer to Industrial Tribunal for adjudication, industrial dispute relating to any matter specified either in the Second Schedule or in the Third Schedule. Therefore, where it is alleged that a settlement which the management pleads was brought about involuntarily or was obtained by fraud (ii) can be referred by the State Government for adjudication to the Industrial Tribunal along with the fresh demands which the workmen have made.

9. Section 10(1)(d) of the Industrial Disputes Act, 1947, also provides that where the State Government is of the opinion that any industrial dispute exists or is apprehended, it may, at any time, by an order in write in refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second or Third Schedule, to a Tribunal for adjudication.

10. Therefore, by virtue of the provisions of S. 7-A read with S. 10(1)(d), the State Government has the jurisdiction to refer to the Industrial Tribunal the dispute relating to the fraudulent or involuntary character of the settlement along with the fresh demands made by the workmen.

11. It has been argued by Mr. Patel that enquiry into the fraudulent or involuntary character of a settlement will not fall under the definition of the expression "industrial dispute" Section 2(k) defines the expression "industrial dispute" in the following terms :

""Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

This definition's wide enough to embrace within it sweep, any dispute or difference between an employer and his workmen connected with the terms of their employment. A settlement arrived at between an employer and his

workmen affects the terms of their employment. If such a settlement was obtained by fraud or was vitiated on account of its being involuntary, it would adversely affect the terms of employment of workmen. Therefore, "prima facie", the definition of "industrial dispute" given in S. 2(k) will embrace within its sweep the investigation of the fraudulent and involuntary character of a settlement arrived at between an employer and his workmen.

12. It will be apposite at this stage to refer to the decision of the Supreme Court in *Sirsilk Ltd. v. Government of Andhra Pradesh*. [1963-II L.L.J. 647]. In that case, S. 17(1), S. 18(1) and (3) and S. 17-A came up for consideration of the Supreme Court. Referring to section 18, the Supreme Court has observed that it provides that a settlement arrived at between an employer and his workmen would be binding between the parties and that under sub-s. (1) of S. 19, it will come its force on the date on which it is signed or on the date on which it is provided that it shall come into force. Therefore, as soon as an agreement is signed in the prescribed manner and a copy is sent to the Government and the conciliation officer, it shall be at once binding upon the parties and it comes into operation on the date when it is signed or will come into force on the date which may have been mentioned in it for its coming into operation. The supreme Court has further observed that in such a case there is scope for any inquiry by Government as to the bona fide character of the settlement which becomes binding and comes into operation once it is signed in the manner provide in the rules and copy is sent to the Government and the conciliation office. Adverting to a settlement which may have been arrived at as result of fraud, misrepresentation or undue influence, the Supreme Court has observed that if the dispute between the employer and his workmen relates to a settlement which is alleged to have been obtained by fraud or involuntarily, it would be another industrial dispute which the Government may refer for adjudication. This decision lays down the proposition that where a private settlement is alleged to have been obtained by fraud or under force rendering it involuntary and unenforceable, it would amount to an "industrial dispute", itself which the Government may refer for adjudication. Since, as observed by the Supreme Court in the decision above referred to, the fraudulent or involuntary character of a settlement itself raises an "industrial dispute", it is difficult to say under S. 10(4) of the Industrial Disputes Act, 1947, that it is a matter incidental to the reference of charter of demand presented by the workmen to their employer. It is not an incidental matter but it is a principal matter. The principal difference between the two, in our opinion, is that unless it is expressly referred by the State Government for adjudication to the Industrial Tribunal, it cannot be adjudicated upon. Mr. Patel was, therefore, justified in arguing that the fraudulent or involuntary character of a settlement arrived at between an employer and his workmen cannot be investigated as an "incidental" matter under S. 10(4) of the Industrial Disputes Act, 1947. Indeed, it can be investigated as a principal matter if the State Government refers it for adjudication.

13. In this connection, Mr. Patel has further argued that the fraudulent or involuntary character of a settlement cannot be referred for adjudication to the Industrial Tribunal by the State Government unless a "demand" in that behalf has been made by the workmen. In the instant case, the charter of demands which the workmen served upon the management did not raise a demand relating to the investigation into the fraudulent and involuntary character of settlement dated 30th May, 1977. According to Mr. Patel, therefore, such a dispute does not exist. We are not impressed by this argument. A conciliation officer while holding conciliation proceedings in respect of demands made by workmen may find another "industrial dispute" existing or may apprehend another "industrial dispute" such as one in the present case, viz., fraudulent and involuntary character of the settlement between the parties. If he finds the existence of or apprehends such an industrial dispute, he will indeed report both to the State Government while making his failure report. We may state in this context that we do not find anywhere that a demand by the workmen for investigation into the fraudulent and involuntary character of a settlement is a condition precedent to the making of a reference of that dispute for adjudication. The power which has been conferred upon the State Government in this behalf is wide enough; so also the power which the conciliation officer exercises is wide enough. Section 12 which confers jurisdiction upon conciliation officer, inter alia, provides that he may hold conciliation proceedings in the prescribed manner where an industrial dispute exists or is apprehended. It is not merely the existence of an "industrial dispute" to which his jurisdiction is circumscribed. It is extended even to an industrial dispute which he may apprehend. Apprehension of an industrial dispute ordinarily presupposes that the workmen have not raised it expressly and yet the conciliation officer comes to apprehend it. Similarly, under S. 10, the jurisdiction of the State Government is also wide enough. It confers upon the State Government jurisdiction to refer a dispute for adjudication if it is of the opinion that an industrial dispute exists or is apprehended. The existence of an industrial dispute may have some reference to the charter of demands made by workmen but apprehension of an industrial dispute, it is difficult to think, has such a reference to the charter of demands made by workmen. The workmen made demands. It creates an industrial dispute. While holding conciliation proceedings in respect of those demands, another industrial dispute may be apprehended. In such a case the conciliation officer has under S. 12, jurisdiction to hold conciliation proceedings even in relation to that apprehended demand. So also under S. 10 of the Industrial Disputes Act, 1947, the State Government has the jurisdiction to refer for adjudication not only an existing industrial dispute flowing from the demands made by the workmen but also an apprehended industrial dispute. An industrial dispute may be apprehended or an apprehended dispute may be inferred from the contentions which the parties have raised before the conciliation officer and which form part of the record to which the State Government refers while deciding whether any reference should be made for adjudication and if a reference should be made for adjudication and if a reference is necessary to be made, what matter should be

referred for adjudication.

14. We may, in this context, briefly refer to two more decisions of the Supreme Court. In *Shambu Nath Goyal Vs. Bank of Baroda*, , the Supreme Court has observed that Industrial Disputes Act, 1947, nowhere contemplates that the dispute would come into existence in any particular, specific or prescribed manner. According to the Supreme Court, a written demand is not a "sine qua non" for coming into existence of an industrial dispute except in cases of a public utility service. The expression "industrial dispute", defined by Section 2(k), connotes a real and substantial difference having some element of persistency or continuity till resolved and likely if not adjusted, to endanger the industrial peace of the undertaking or the community. When the parties are at variance and the dispute or difference is connected with the employment or non employment or the terms of employment or with the conditions of labour, there comes into existence an industrial dispute. To read into the definition the requirement of a written demand for bringing into existence an industrial dispute, would tantamount to re-writing the section. This decision supports the view which we have expressed in this judgment.

15. Mr. J. R. Nanavaty who appears on behalf of the State of Gujarat has also invited our attention to *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, . In that decision, principles applicable to the jurisdiction of a civil Court in relation to an industrial dispute have been stated. Mr. Nanavaty has argued that the third principle stated in that decision governs the present case. The third principle has been laid down in these terms :

If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

In the instant case, the settlement was arrived at under the provisions of the Industrial Disputes Act, 1947, and provisions of S. 2(p) were complied with. The benefits which the workers got under that settlement were a result of the enforcement of the provisions of Industrial Disputes Act, 1947. The enforcement of those provisions and the consequent settlement arrived at between the parties not only created certain rights for the workmen but also created obligations. A right which a workman enjoys produces a corresponding obligation for his employer. A fraudulent or involuntary settlement arrived at between an employer and his workmen produces an obligation for the workmen and not the right. We say so, because such a settlement, if allowed to remain in force, would refrain or prevent the workmen from raising a fresh "industrial dispute" during its currency. That obligation flows directly from the provisions of Ss. 18 and 19 of the Industrial Disputes act, 1947. Therefore, what the employer seeks to do by pleading the settlement which the workmen allege as "fraudulent and involuntary" is to enforce an obligation against the workmen. Looked at from this point of view, the contention relating to the fraudulent and involuntary character of the of the settlement, falls

squarely within the third principle laid down by the Supreme Court.

16. Mr. Patel has argued that "fraud" is something unknown to Industrial Disputes Act, 1947, and that it falls within the realm of civil law. Therefore, if workmen allege that the settlement dated 30th April, 1977 is fraudulent and involuntary, remedy according to him lies in going to the civil Court. According to him, the first principle laid down by the Supreme Court in the decision referred to above will govern the present case. For the reasons stated above, we are unable to uphold the argument raised in that behalf.

17. Mr. Patel has then invited our attention to certain decisions which, in our attention to certain in our opinion, have no application to the present case. All those decisions proceed on the assumption that the settlements pleaded therein were voluntary and binding. It cannot be gainsaid that a voluntary settlement arrived at between an employer and his workmen and registered under the Act operates during the period specified therein and prevents the workmen from raising fresh demands during its currency.

18. In order to be fair to Mr. Patel who has shown us all these decisions, we only make a bare reference to all of them because the question which has been raised in the instant case was not raised in those cases and in none of them the basic validity of a settlement between an employer and his workmen was challenged. They are as follows :

State of Bombay v. K. P. Krishan, [1960-II L.L.J. 592]; C. Mackertich Vs. Steuart and Co., Ltd. ; The Jhagrakhan Collieries (P) Ltd. Vs. Shri G.C. Agrawal, Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur and Others, ; Shukla Manseta Industries Private Ltd. Vs. The Workmen Employed under it, ; Tata Chemicals Ltd. Vs. The Workmen represented by Chemicals Kamdar Sangh, ; Poona Mazdoor Sabha Vs. Dhutia G.K. and Another (Esco Ltd.), ; New Standard Engineering Company Ltd. Vs. N.L. Abhyankar and Others, .

19. It is not necessary for us to cite any decision in support of our view that the powers of the State Government u/s 10 are very wide. However, if one is required, it is in Niemla Textile Finishing Mills Ltd. v. Second Punjab Tribunal, AIR 1957 S.C. 329. It has been laid down in that decision that it is not necessary that all the steps which are contemplated in the manner indicated in S. 10 for reference of disputes to Boards, Courts or Tribunals should be taken seriatim one after the other. Whether one or the other of the steps should be taken by the appropriate Government, must depend upon the exigencies of the situation, the imminence of industrial strife resulting in cessation or interruption of industrial production and breach of industrial peace endangering public tranquillity and law and order. What step would be taken by the appropriate Government in the matter of the industrial dispute must, therefore, be determined by the surrounding circumstances and the discretion vested in the appropriate Government for setting up one or the other of the authorities for the purpose of

investigation and settlement of industrial dispute, must be exercised by it having regard to the exigencies of the situation and the objects to be achieved. No hard and fast rule can be laid down as to the setting up of one or the other of the authorities for the purpose of bringing about the desired end which is the settlement of industrial dispute and promotion of industrial peace and it is hardly legitimate to say that such discretion as is vested in the appropriate Government will be exercised "with an evil eye and an unequal hand."

20. In support of his argument that investigation into the fraudulent and involuntary character of a settlement is not an "incidental" matter within the meaning of sub-s. (4) of S. 10 of the Industrial Dispute Act, 1947, he has invited our attention to the decision of the Supreme Court in *The Central Inland Water Transport Corporation Ltd. Vs. Their Workmen*, . It is not necessary to make any detailed reference to this decision because we have already expressed the view that such a dispute is an independent industrial dispute. He has also invited our attention in that behalf to the decision of the Rajasthan High Court in *Jaipur Spinning and Weaving Mills, Ltd. Vs. Jaipur Spinning and Weaving Mills Ltd., Mazdoor Union and Another*,

21. It has been argued by Mr. Patel that it is the second settlement dated 30th May, 1977 which has been terminated by the workmen and that they have not terminated the first settlement. Proceeding on this reasoning, he has argued, that if the second settlement is found to have been vitiated by fraud, will the workmen be relegated to the first settlement ? The terms of the second settlement which we have read in terms provide that the first settlement was incorporated into the second settlement and that, therefore, both of them were terminated. By terminating the settlement dated 30th May, 1977, the workmen have unquestionably terminated both the settlements which have merged into one.

22. It has next been argued by Mr. Patel that if as a result of adjudication it is found that the settlement in question was not vitiated by fraud or was not obtained involuntarily, then it will be an exercise in futility. We are not able to agree to the proposition which Mr. Patel has raised before us. Assuming that the adjudication is in favour of the management, even then the "industrial dispute" relating to the "fraudulent and involuntary character" of the settlement in question will come to an end. Such an adjudication will be a step in the direction of establishing harmonious relationship between the workmen and the management and promoting industrial peace. It can never be said that such an exercise will be an exercise in futility.

23. We are, therefore, of the opinion that the conciliation officer has the jurisdiction to admit to conciliation the demands made by the workmen and has also jurisdiction to per se find out whether the settlement pleaded by the management was vitiated by fraud and was involuntary. If he fails to bring about conciliation in respect of the demands made by the workmen, indeed he will have jurisdiction to report failure of his attempt in resolving the dispute and will also

have the jurisdiction to report to the State Government that in independent "industrial dispute" relating to the fraudulent and involuntary character of the settlement in question between the parties has been apprehended by him.

24. In that view of the matter, the only contention which Mr. Patel has raised fails and is rejected.

25. The petition, therefore, fails and is dismissed. Rule is discharged with no order as to costs.