

(1997) 07 BOM CK 0047
In the Bombay High Court
Case No : Writ Petition No. 932 of 1997

Air India Hostesses Association

APPELLANT

Vs

Air India Limited and others

RESPONDENT

Date of Decision : 08-07-1997

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 35
Constitution of India, 1950 — Article 14, 15, 16, 226, 227
Industrial Disputes Act, 1947 — Section 10, 11
Trade Unions Act, 1926 — Section 2

Citation : (1997) 4 ALLMR 85 : (1998) 1 BomCR 618

Hon'ble Judges : S.D. Gundewar, J; Ashok Agarwal, J

Bench : Division Bench

Advocate : K.K. Singhvi and Sanjay Singhvi, for the Appellant; E.P. Bharucha, K.B. Swamy and Ms. E. Pereira, instructed by Bhasin and Co. and J.P. Cama, S.M. Dharap, K.P. Anilkumar and A.V. Mohta, for the Respondent

Judgement

Ashok Agarwal, J.—Present petition seeks a declaration that the settlement dated 5th of June, 1997, arrived at between Air India Limited, the respondent No. 1 and the Air India Cabin Crew Association, the respondent No. 2 herein, is not binding upon the members belonging to the petitioner Air India Hostesses Association.

2. Respondent No. 2; it is undisputed, is a registered and a recognised trade union. As far as petitioner is concerned, though it has styled itself as a registered trade union, its status of being a registered trade union, is seriously disputed by the respondents. Petitioner, it is however undisputed, was a registered trade union since 1984. The registration, it is claimed, has been cancelled with effect from 12th of February, 1990.

3. After the settlement was arrived at between the first and the second respondents, on 5th of June, 1997, first respondent issued a notice dated 6th of June, 1997 for implementing the settlement with effect from the 28th of June,

1997. Change of flight conditions, in terms of the settlement, have been brought about with effect from the 23rd of June, 1997. On 27th of June, 1997 a reference has been made to the Regional Labour Commissioner for conciliation in respect of the terms of the settlement. A day prior i.e. on the 26th of June, 1997, the present petition is filed. The same was moved for grant of ad-interim reliefs on 27th of June, 1997. No ad-interim reliefs are granted though on a specific understanding that no equities will be claimed by the respondents on the basis of events which may take place from that day onwards till further orders are passed in the petition.

4. On 1st of July, 1997, petitioner has submitted an application before the National Industrial Tribunal in a pending reference being No. N.T.B. 1 of 1990 for being impleaded in an application which, it apprehended, would be moved for filing the settlement for passing an award in terms thereof.

5. Prior to the aforesaid settlement, an interim settlement was arrived at on 26th of May, 1993. Based on the interim settlement, an interim Award was passed by the Tribunal on 7th of April, 1995. Petitioners it is conceded that, orders in the aforesaid interim settlement and the Award is binding upon its members.

6. Respondents No. 2 it is submitted, has a total membership of 1572 out of a total 1759 cabin crew members. It is, however, contended on behalf of the petitioner that it has a membership of about 500 members. The fact remains that the second respondent commands the majority membership of the cabin crew members of the first respondent. Short questions which arise for consideration is, whether petitioner has made out a fit case for interference under Article 226 of the Constitution and whether a restraint order should be clamped upon respondents from complying with the terms of settlement.

7. In the case of. National Organisation of Bank Workers" Federation of Trade Unions v. Union of India and others, 1993 (1) C.L.R. 995 a Division Bench of this Court had a occasion to deal with a question similar to the one which has arisen in the present petition. Petitioner- federation in the said case was not a registered body under the Trade Union Act. It had raised demands on behalf-of employees which were not conceded by the employer. Court held;

"4. ... Similarly it is equally necessary to find out the locus of the appellant to raise a dispute in its capacity as a Federation of trade unions on behalf of the employees of the Bank. It has come to light during arguments that the appellant Federation is not a registered body under the Trade Unions Act, 1926. It is hence not a "Trade Union" within the meaning of section 2(h) of the said Act. The definition includes any Federation of two or more unions. In the absence of it being a registered body, the appellant is incompetent to raise or make any demand for and on behalf of the employees so as to fall within the scope and ambit of the "industrial dispute" as defined u/s 2(k) of the Industrial Disputes Act. If the appellant is not in a position to raise an "industrial dispute", it has no locus standi to seek the privilege of negotiating those demands, which is the privilege

of only registered trade unions or a group of workmen under the Industrial Disputes Act. The appellant, admittedly, not being a registered trade union is not a juristic person and hence also incompetent to file the writ petition."

8. If regard is had to the aforesaid decision of this Court, it would appear that petitioner, in the instant case, will not even be entitled to raise an industrial dispute. If it cannot raise an industrial dispute it also cannot dispute a settlement arrived at between respondent No. 2, which is a registered Trade Union and respondent No. 1 Management.

9. In the case of *Nargish Meerza & others v. Air-India & another*, Writ Petition No. 116 of 1984 decided by this Court on 27th May, 1984 Coram Mrs. Sujata V. Manohar, J. (As she then was) the Court was considering a record note which recorded an agreement entered into between Air India and Air India Cabin Crew Association, who are none others but the respondents before us. In para 21 and 22 of the judgment it is observed:

"21. There is considerable force in this submission. The Record Note does not amount to a settlement under the Industrial Disputes Act. However, the agreement, which is arrived at as a result of negotiations between the Management and the Workers in the course of collective bargaining, must be given due weight and consideration. The outcome of such negotiations should be respected in the interests of industrial peace. In the case of *Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others*, the Supreme Court observed that when negotiations take place which have to be encouraged, particularly between labour and employer, in the interest of general peace and well-being, there is always give and take. The settlement has to be taken as a package deal. In the case before the Supreme Court it said that when labour had gained in the matter of wages, if there was some reduction in the matter of the Dearness Allowance, it could not be said that the settlement as a whole was unfair and unjust. In the case before the Supreme Court the Award given by the Tribunal was under challenge in the Court. In the course of litigation there was a settlement arrived at between the Management and the union and the above observations were made by the Supreme Court in respect of the settlement which was challenged before the Court. The Supreme Court went on to observe, "It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained, the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust."

"22. In the present case, though the Record Note does not constitute a settlement under the Industrial Disputes Act. it is an agreement which is arrived at by Air-India with the 2nd respondent Association. It must be examined as a whole in order to see whether the terms and conditions relating to the post of Dy. Chief Air Hostess can be considered as so unreasonable or unjust as to

constitute violation of Articles 14, 15 and 16 of the Constitution. As mentioned earlier, the post of Dy. Chief Air Hostess carries the higher pay scale of Rs. 1100-1600, which is the same as the scale of an In flight Supervisor. She has been given managerial and supervisory duties on ground. There is no quarrel with these duties and functions which are assigned to the Dy. Chief Air Hostess and the scale of pay awarded to her. The objection relates to her being made to line fly as an ordinary Air Hostess. The fact that she is not allowed to wear her name badge is a corollary to this condition relating to line flying; because if on board her position is that an ordinary Air Hostess, she cannot wear the name badge as Dy. Chief Air Hostess. Can this condition be considered as unreasonable and unjust ? At first blush the condition relating to line flying does appear to be discriminatory. However, if it is viewed in the context of the agreement which is arrived at as a whole, it cannot be described as wholly arbitrary or unjust."

10. A Division Bench of this Court (Coram: Lentin & Kurdukar, JJ.) in the very same case, which was carried in appeal, by a judgment and order passed on the 31st of October, 1985, has observed:

"16. It was next urged by Miss. Jaising that the impugned Record Note dated 17th November, 1983 is illegal and invalid and not binding on the air-hostesses because (i) it is not a settlement within the meaning of section 2(p) of the Industrial Disputes Act, 1947; (ii) it was not arrived at during the course of conciliation proceedings and is not in the form prescribed under the rules; (iii) a copy of the Record Note was not endorsed to the Officer authorised in this behalf by the appropriate Government."

"17. None of this is of any substance. The Record Note embodies the agreement which resulted from protracted negotiations between Air India and A.I.C.C.A. in the course of hard collective bargaining. The Record Note is the result of a genuine effort between Air India and A.I.C.C.A. to cast balance between the two separate and distinct classes. It cannot be lightly thrown overboard. It must be given due weight and consideration. The outcome of such negotiations must, in the interest of industrial peace, be respected and encouraged. The settlement meets with the approval of the vast majority of the air-hostesses and even the senior-most among them. They want to line fly as that gives them additional benefits which otherwise are denied to them. It is only this splinter group of some 200 air-hostesses which has taken up cudgels against it. It would be a mistake to scan the settlement in bits and pieces, accept some parts and reject the others, unless of course it can be demonstrably shown that what is objectionable totally outweighs all other advantages gained. Until that is demonstrated the Court will hesitate to hold a settlement as unfair and unjust. *Herbertsons Ltd. v. Workmen*, AIR 1977 S.C. 322. Nothing of the kind can be said in the present case, the Record Note, balancing as it does, the pulls, pressures and claims of the two separate and distinct classes. The test of severability does not apply. "18. It is also not without its own significance that this minority splinter group of air-hostesses is happy to avail itself of the benefits

of the earlier settlements and after approbating them, seeks to repudiate the present settlement."

11. Decision in the aforesaid cases aptly apply to the facts of the present case. Settlement in the instant case has been arrived at after protracted negotiations between Air India and A.I.C.C.A. in the course of hard collective bargaining. It cannot lightly be thrown overboard. It must be given due weight and consideration. It must be respected and encouraged in the interest of industrial peace. It meets with the approval of the vast majority of the air-hostesses. It is only a splinter group of about a few hundred air-hostesses which has taken cudgels against it.

12. A Single Judge of this Court, while dealing with a controversy, similar to the one raised in the present petition, in the case between Airlines Cabin Crew Association Vs. Indian Airlines Corporation and others, has observed :

"Mr. Mhatre, then urged that the settlement is to the detriment of the Cabin Crew members and the members of the petitioner Association who had not accepted the settlement were not considered for promotion or were promoted. The contention that the settlement is not advantageous to the Cabin Crew members cannot be accepted because it is well settled that unless it is established that the settlement is not fair and just, the courts will be slow to disturb the same. The petition does not set out that the Corporation had refused to consider any member of the petitioner Association for promotion, but in case any member is insisting on promotion on the basis of settlement, then such member at the same time cannot contend that the settlement is not binding. Larger majority of the Cabin Crew members have accepted the settlement and it is not possible to ignore it merely because a few Cabin Crew members have got some objection. In this connection, the reliance by Shri Taliyarkhan on the decision in the case of *Herbertsons Ltd. v. The Workmen of Herbertsons, Ltd. and others*, 1976 (33) F.L.R. 398 is appropriate. The Supreme Court observed that it is not proper to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. The settlement has to be accepted or rejected as a whole and unless it is demonstrated to be unfair and unjust, the Court will be slow to reject it."

13. In the case, between (*Herbertsons Ltd. and Their Workmen and others*), 1976 (33) F.L.R. 398 which is referred to in the aforesaid decisions, the Supreme Court has observed:

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other inducements. Prima facie a

settlement in the course of collective bargaining is entitled to due weight and consideration. It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust."

14. The settlement in question has been arrived at between the management and the registered union which is recognised and which holds the majority of Cabin Crew Members as its members. Petitioner is a minority union. The settlement has been brought into force and the crew memoirs have also joined in the settlement and have also received additional payments under the settlement. We were taken through the salient features of the settlement. Though we were not called upon to give our decision as to the fairness or otherwise of the terms of the settlement, on a prima facie observation, we do not find the terms to be unfair or unjust or against the interest of the workers. The terms of settlement are such which can be implemented only as a whole or not at all. The same also cannot be implemented vis-a-vis only some of the cabin crew members and not implemented in regard to others. In our view, it would be in the interest of justice as also for promoting industrial peace and harmony, that the settlement should be permitted to be enforced. The settlement, in due course, will be submitted to the National Industrial Tribunal for passing of an Award. Petitioner will be entitled to be heard before the Tribunal, Moreover, a reference has also been made to the Conciliation Officer. Petitioner will be heard in Conciliation proceedings also. In the event of there being failure of conciliation a Reference would follow to the Tribunal where again petitioner will be heard. Petitioner, in the circumstances, we find, has alternate efficacious remedies. Petitioner, in the circumstances, is not entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution. Petition, in the circumstances, we find, is devoid of merit and the same is summarily rejected.

15. Expedite the issue of certified copy.

16. Appeal dismissed.