
(1988) 07 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14814 of 1984

Andhra Scientific Co.

APPELLANT

Vs

The Labour Court, Guntur and Others

RESPONDENT

Date of Decision : 15-07-1988

Acts Referred:

Industrial Disputes Act, 1947 — Section 12, 12(1), 12(3), 18, 18(1)

Citation : (1990) 1 LLJ 259

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Judgement

1. Since common questions of law and fact arise in both the writ petitions, they are disposed of by a common judgment. For the purpose of disposal of the writ petitions, the facts in W.P. No. 14814/84 may be stated. Respondent No. 2 and others are the workmen appointed in the Andhra Scientific Company Ltd., Machilipatnam, which was taken over under the Andhra Scientific Company Ltd. (Acquisition and Transfer of Undertakings) Act, 1982 (Act 71 of 1982). They laid application u/s 33-C(2) of the Industrial Disputes Act (Act 14 of 1947), for short, "the Act", for computation of difference of wages payable to them under the Wage Board recommendations for scientific industries. Their claim is that they are entitled to wages at Rs. 1/- per point for rise or fall of the AI India Consumer Index, every half yearly. The base is 1960. In 1960. The consumer piece index was 100 points. The calculation is to be effected accordingly and if so calculated they would be entitled to wages at Rs. 70/- per month from 1974 to 1977 and at Rs. 91/- from 1977 onwards.

2. The petitioner has resisted this claim. It is their case that after the Wage Board recommendations, conciliation was effected by the Labour Department in the proceedings initiated u/s 12 of the Act; there was a settlement entered into on 21st July, 1975 to be effective from 1st April, 1974; this was signed by the three parties Management, Labour Officer and Workers Union Under item No. 1 of the pay-scales for the skilled and unskilled workmen, the Variable Dearness

Allowance was fixed at Rs. 82/-. The base for item No. 2 variable Dearness Allowance is 1960. The All India Consumer Price index over and above 252 points as on the date of agreement would be paid at the rate of Re. 1/- per unit; it is revisable twice a year commencing the first period from January to June and the second period from July to December. They are to be effected in June and October respectively. The workmen were being paid at the rate of Rs. 82/- upto 1st April, 1974 which was revised in 1977 at Rs. 1-30 ps. per point and they were paid at that rate from 1977. Therefore, the amounts are being legally paid. It is also further contended that by operation of the agreement entered into u/s 12(3), the application u/s 33-C(2) does not lie. It is also further contended that under the recommendations of the Wage Board, the application u/s 33C(2) also does not lie.

3. The Labour Court had considered the question from two perspectives. On the binding nature of the settlement u/s 12(3) it has held that since the proposal for settlement had not been circuited among all workmen, and the petitioners are not parties to the settlement and they are not the members of the Union which represented the tripartite agreement, therefore it is not binding on them. It next considered on merits 1960 is the base period. The consumer index was taken at 100 points., and calculated on that basis and upheld the claim of the workmen.

4. Sri Srinivasa Murthy, learned counsel for the petitioner firstly contended that application u/s 33-C(2) does not lie in view of the settlement arrived at u/s 12(3) of the Act. Section 12(3) postulates that if a settlement of the dispute or any of the matters in dispute is arrived at in the course of the conciliation proceedings, the Conciliation Officer shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute. The settlement was now ultimately accepted by the Government and it became effective from 1st April, 1974. u/s 18 of the Act, the persons on whom the settlement is binding has been postulated. Sub-section (3) thereof states that a settlement arrived at in the course of conciliation proceedings under the Act which has become enforceable shall be binding on (a) (b) all other parties summoned to appear in the proceedings as parties to the dispute unless the Board, Arbitrator, Labour Court, Tribunal of National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause. Relying thereon, the contention of Sri Srinivasa Murthy is that the petitioners are bound by the agreement though they are not members of the rival union or signatories to the agreement.

5. Sri Venkateswarlu, learned counsel for the workmen-respondents, contends that the respondents being not parties to it, they are not bound by the agreement and the union that represented the workmen had not safeguarded the interest of the workmen; therefore it is not binding on them.

6. The question, therefore, is whether the settlement arrived at u/s 12(3) read with Section 18(3) is binding on the respondents. This point is on longer res integral. In *Rammagar Cane & Sugar Co. v. Jatin Chakravorty*. (1961 I LLJ 224 at

247) Gajandragadkar, J. (as he then was) speaking for the Court, held thus :

"... In appreciating the merits of the rival contentions thus raised in this appeal, it is necessary to bear in mind the scheme of the Act. It is now well settled that an industrial dispute can be raised in regard to any matter only when it is sponsored by a body of workmen acting through a union or otherwise. When an industrial dispute is thus raised and is decided either by settlement or by an award, the scope and effect of operation is prescribed by Section 18 of the Act. Section 18(1) provides that a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement; whereas S. 18(3) provides that a settlement arrived at in the course of conciliation proceedings which has become enforceable shall be binding on all the parties specified in Clauses (a), (b), (c) and (d) of sub-section (3). Section 18(3) makes it clear that, where a party referred to in Clause (a) or (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in the establishment or part, would be bound by the settlement. In other words, there can be no doubt that the settlement arrived at between the appellant and the Employees' Union during the course of conciliation proceedings on 25th February, 1954, would bind not only the members of the said union but all workmen employed in the establishment of the appellant at that date. That inevitably means that the respondents would be bound by the said settlement even though they may belong to the rival union. In order to bind the workmen it is not necessary to show that the said workmen belong to the union which was a party to the dispute before the conciliator. The whole policy of Section 18 appears to be to give an extended operation to the settlement arrived at in the course of conciliation proceedings, and that is the object with which the four categories of persons bound by such settlement are specified in Section 18, sub-section (3)".

The same was the view taken by the learned Judge in *New India Motors (P) Ltd. New Delhi Vs. K.T. Morris*, where it was held :

"Even as a matter of construction pure and simple there is no justification for assuming that the workmen concerned in such disputes must be workmen directly or immediately concerned in the said disputes. We do not see any justification for adding the further qualification of direct or immediate concern which the narrow construction necessarily assumes. In dealing with the question as to which workmen can be said to be concerned in an industrial dispute we have to bear in mind the essential condition for the raising of an industrial dispute itself and if an industrial dispute can be raised only by a group of workmen acting on their own or through their union, then it would be difficult to resist the conclusion that all those who sponsored the dispute are concerned in it. As we have already pointed out this construction is harmonious with the definition prescribed by Section 2(s) and with the provisions contained in Section

18 of the Act. Therefore, we are not prepared to hold that the expression "workmen concerned in such dispute" can be limited only to such of the workmen who are directly concerned with the dispute in question. In our opinion, that expression includes all workmen on whose behalf the dispute has been raised as well as those who would be bound by the award which may be made in the said dispute".

This view was reiterated in *The Jhagrakhan Collieries (P) Ltd. Vs. Shri G.C. Agrawal, Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur and Others*, and *Tata Chemicals v. Workmen, Tata Chemicals* (1978 II LLJ 222). As far as this Court is concerned, in *Praga Tools Ltd., v. Praga Tools, Mazdoor Sabha INTUC* (1975 II LLJ 218). *Obul Reddy. J.* (as he then was) has considered the entire case law as on that date and held at page 223 :

"It is therefore, will settled that, in order that a settlement reached in the course of conciliation proceedings should be valid and binding on all the employees, it is not necessary that if there are several unions, all those unions should be represented. It is enough if the settlement is one which concerns all the employees of the employer or a dispute common to all the employees of the employer. As has been pointed out in *The Bata Shoe Co. (P) Ltd. Vs. D.N. Ganguly and Others*, , which is often relied upon and quoted subsequently by the Supreme Court and the High Courts, it is the duty of the conciliation officer to promote a right settlement and to do everything he can to induce the parties to come to a fair and amicable settlement of the dispute and it is only such a settlement which is arrived at while conciliation proceedings are pending that can be binding u/s 18."

7. In *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, it was held that once there is a settlement u/s 12(3), application u/s 33-C(2) does not lie.

8. In view of the settled legal position, the only conclusion that could be deduced is that when there is a dispute sponsored by a Union and the dispute was concerning all the employees in the establishment - be they members of the Union or the rival union and whether they are parties to the agreement or not, it binds all the workmen and, therefore, the parties are bound by the settlement arrived at u/s 12(3) read with Section 18(3) of the Act.

9. It is then contended by Sri Venkateswarlu that these decisions have been rendered prior to the Amendment Act 1957 and therefore they are required to be reconsidered in view of the later Amendment. I find no force in the argument. Even *Paraga Tools* case (supra), the *Jhagrakhan Collieries* case (supra) and *Tata Chemicals* case (supra) are after the amendment. The ratio in *Ramanagar Cane & Sugar* case (supra) was followed. Under those circumstances, I have no hesitation to conclude that the settlement was reached on behalf of the workmen and signed by the parties as required u/s 12(3) of the Act and approved by the Government and therefore it is binding on all the workmen. The Labour Court got over the difficulty by observing that the minutes of the proposed settlement were

not circulated to all the workmen and it was not discussed by the union; they are not parties to the settlement and therefore it is not binding on them. This finding is illegal in view of the aforesaid legal position.

10. Sri Venkateswarlu, learned Counsel submits that if the construction adopted by the Supreme Court is given effect to, it would be quite likely that the Management would manipulate to maneuver with the rival unions and tie down against the interests of the workmen in liaison with that union and that it leads to industrial unrest which is not the object of the Act. I find it difficult to accept this contention. The possibility may be there. But so long as the request has espoused the cause of the workmen and on the basis thereof, the Labour Officer issued notice for conciliation u/s 12(1) and the proceedings were initiated and during the conciliation proceedings when a settlement is arrived at, then in the light of the law, the settlement is binding on all workmen irrespective of the fact whether they are parties to the settlement or members of the union that espoused the cause.

11. Admittedly 1960 is the base. 252 points is agreed to be the base as on 1st April, 1974. Item-1 of the settlement postulates that variable D.A. is Rs. 82/-. If that is the base taken, then the calculation to be adopted is on the basis of rise or fall of the price index above 252 points, It is not the finding of the Court below that this method is not correct one. On the other hand the finding arrived at by the Labour Court is that payment was not made as per the Wage Board recommendations. In view of the settlement arrived at by the parties u/s 12(3), the recommendation made by the Board is not binding on the management. Therefore, the calculation adopted by the Labour Court in that regard basing on the Wage Board recommendation is clearly illegal.

12. The writ petitions are accordingly allowed, but in the circumstances, without costs. Advocate's fee; Rs. 250/- in each.