
(1980) 07 BOM CK 0024
In the Bombay High Court
Case No : Writ Petition No. 853 of 1980

Apar (Pvt.) Limited

APPELLANT

Vs

S.R. Samant and others

RESPONDENT

Date of Decision : 17-07-1980

Acts Referred:

Industrial Disputes Act, 1947 — Section 9A
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 27, 28, 30(1)(b)
Minimum Wages Act, 1948 — Section 7, 9

Citation : (1980) 41 FLR 213 : (1980) 2 LLJ 344

Hon'ble Judges : V.A. Mohta, J; D.B. Deshpande, J

Bench : Division Bench

Judgement

Mohta, J.—The petitioner is a limited company carrying on business of manufacturing conductors, heavy duty underground power and control cables, welding electrodes, etc. The second respondent was working as an employee in the carpentry department of the petitioner's factory at Vithalawadi in District Thane. The third respondent is a registered Trade Union representing the employees in the petitioner's factory. Industrial Court passed an order holding petitioner guilty of an unfair labour practice under Item No. 9 of Schedule 4 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (in short Maharashtra Act 1, 1972) and directing it to implement a settlement dated 3-8-1974 with effect from 15th October, 1975 till the date of closure of the company, which we are informed in the end of October, 1977. By the present petition this order is impugned.

2. Before proceeding with the points raised it would be necessary to set out certain relevant background. The petitioner had approximately 600 workmen on its roll. Before 3-8-1974 wages and other emoluments were being paid to the workmen in terms of an agreement dated 23rd January, 1971. Undisputed position is that this agreement also provided for payment of agreed wages which were more than the minimum prescribed under the Minimum Wages Act. By

settlement dated 3-8-1974 there was increase in the basic wages, dearness allowances, house rent, etc. In addition to that production bonus in terms of the scheme to be formulated had also become payable. The workers agreed to make all their efforts to eliminate the factors of low production and to bring up the same to the productivity level of 1964 and to maintain and improve the same. The workers not only agreed to maintain discipline but further agreed not to raise any demand involving financial burden on the company except the demand for bonus till the settlement was terminated in accordance with law. The settlement was binding on the parties up to the end of April, 1977.

3. It is common ground that petitioner company paid wages and other benefits to the workmen in terms of the settlement up to the end of August, 1975. However, from September, 1975 the company refused to pay the production bonus and with effect from 15th October, 1975 it refused to pay basic wages, dearness allowance, house rent, etc., as per the settlement. Notice dated 21st August, 1975 was put up for making a mention that because of the attitude of indiscipline on the part of workers and deliberate go-slow tactics resulting into low production, the management was relieved of its commitments and obligations imposed upon it by the agreement. A notice in terms of S. 9A of the Industrial Disputes Act, 1947 was issued in Form III under Rule 37 of the Industrial Disputes (Bombay) 1957 indicating certain scale of wages to which only, the workers were entitled. The common ground is that these scales conform to the provision of the Minimum Wages Act, and were even less than what was agreed in the earlier agreement dated 23rd January, 1971.

On 22nd November, 1975 the second respondent filed a complaint before the Industrial Court at Bombay under S. 28 of the Maharashtra Act No. 1 of 1972. The petitioner filed a short written statement on 24th March, 1976 mentioning that the petitioner had nothing to add to what was stated in the two affidavits of Shri R. V. Patil, the factory Manager, dated 25th November, 1975 and 10th February, 1976. The petitioner did not dispute that it had decided not to pay to the workers wages and other emoluments in terms of the settlement dated 3rd August, 1974. However, the petitioner pleaded justification for so doing on the ground that the workers failed to perform their part of the settlement and as a result they were not entitled to the benefits contained in the settlement. According to the petitioner it was not under an obligation to perform its part of the settlement unless and until the other party to the agreement, viz., workers also performed their part of the settlement, as no agreement can be a one way traffic. It appears that the Industrial Court by its order dated 17th January, 1977 held that the petitioner had engaged in an unfair labour practice as alleged in the complaint. This order was passed even without recording the evidence and it came to be challenged by Special Civil Application No. 452 of 1977. In that petition in addition to the worker second respondent, the union of the workers of the company was also made a party, as the third respondent. By consent of parties the previous order was set aside and the matter was remanded back to the Tribunal for disposal after hearing the parties. This was done on 16th

February 1977. On behalf of the petitioner affidavits of various persons were placed on record and the two officers, viz., Shri R. B. Patil and Shri Madhu Holmagi were offered for cross-examination. The second respondent had also entered into the witness box and was also cross-examined. But it appears that subsequently he was not available for further cross-examination as requested by the petitioner and as a result his evidence was ignored and the matter proceeded on the basis that his evidence should not be considered.

4. There is no manner of doubt about the fact that the petitioner has not paid wages and other emoluments in terms of the settlement, from 15th October, 1975. The Tribunal after considering the material on record and so also the certain undisputed positions came to the conclusion that either under any statute or under the settlement, the petitioner had no right to unilaterally reduce the wages and do away with other emoluments on the ground that the workers had indulged into indisciplined behaviour and had deliberately resorted to go-slow tactics. A finding of fact was recorded that the alleged low production could not be attributed to the so-called go-slow tactics and indeed was attributable to other factors, such as retrenchment of more than 100 workers, reduction of quota of basic raw material - aluminum from 7390 metric tones to 2038 metric tonnes and non-availability, even of that quota. On these findings the Tribunal directed the petitioner to implement the settlement as prayed by the second respondent in respect of the workers of the factory till the date of the closure of the factory.

5. Before proceeding with the points raised, we would like to mention that as far as the term regarding payment of production bonus is concerned the scheme envisaged under the agreement was not formulated. The production bonus was, therefore, being paid on the basis of the earlier agreement. Shri Shetye, the learned advocate for the second and the third respondents has fairly conceded that under the circumstances there was no question of paying the production bonus on the basis of scheme which was not formulated and, therefore, the relief granted must be deemed to be restricted to the production bonus which was being paid earlier.

6. Shri Khambatta, the learned advocate for the petitioner in the first place contended that Item No. 9 of Schedule 4 of the Act No. 1 of 1972 could not be pressed into service as it was not a case of non-implementation of the settlement at the initial stage. In view of the admitted position that the settlement was implemented and the payment was being made on that basis for some time, at best what could be alleged was the breach of the settlement and not the failure of its implementation. We see no substance whatsoever in the submission and no justification for putting such a narrow construction on the words of the relevant item. Failure to implement the settlement would include failure to implement not only at the initial stage but at any point of time till the settlement was in force and had binding effect on the party. In view of the admitted position that it was to remain in force upto the end of April, 1977 it seems clear to us that the action

of the management cannot fall out of the item by virtue of the only fact that there has been non-implementation subsequently.

7. The second submission, is based on the principle "no work; no wages". The argument is that the settlement is a document incorporating the corresponding rights and obligations of both the parties. The increase in wages and other emoluments under the settlement was agreed by the petitioner on the basis of assurance of certain level of production being reached by the workmen. The petitioner did its best to continue to comply with its part of the obligation, but because of the unjustified attitude on the part of the workmen, the production level was not only not increased but indeed was brought down by deliberate go-slow movement which was undertaken in concert. This resulted into crushing the entire economy of the company on account of the breach of the terms which the workmen were obliged to perform. Inasmuch as the workmen had committed the breach of their obligations, they cannot be heard to complain that the other party has not implemented its obligation. Evidence was led to show that the workmen had committed breach of the relevant clauses of the settlement as a result of which the petitioner was within its right to make deductions. We were taken through some clauses of the settlement which, according to Shri Khambatta, the learned advocate for the petitioner, referred to the relevant corresponding obligations. Shri Shetye, the learned advocate for the respondent Nos. 2 & 3 on the other hand invited our attention to the fact that in the settlement there was a total absence of any specific term or condition entitling the petitioner to refuse to pay wages or to reduce emoluments on the ground that the workmen had not fulfilled their part of the settlement. We see considerable force in this point raised by Shri Shetye. Independent of the question, as to whether the workmen did indulge into acts of indiscipline and deliberate go-slow tactics, the basic question is whether even in such case there was any right in the employer to deduct the wages unilaterally.

8. Now it cannot be disputed that the wages can be deducted either in terms of settlement or in terms of the statutory provisions. Turning to the question of statutory provision permitting deduction, we may notice certain provision of the Payment of Wages Act, Sections 7 and 9 of the said Act permits certain deductions from wages on certain grounds. While S. 7 deals with contingencies other than the absence from duty, S. 9 refers to the same. The Legislature in its wisdom has chosen not to permit the employer, deduction from wages on the grounds and contingencies with which we are presently dealing with, as will be clear from these provisions. Even if the claim for wages made in terms of Payment of Wages Act it would not be possible for the petitioner to withhold the payments under the settlement on the grounds on which it unilaterally reduced the wages and any other emoluments. Shri Khambatta fairly conceded that what was done by the management did not fall in the permissible statutory deduction. The argument was that under the circumstances it will have to be held that the workmen had not earned wages at all and, therefore, were not entitled to the same. We do not think that the argument is sound. Undisputed position is that all

these workers including the second respondent were on the permanent roll of the petitioner and were being paid on monthly basis. They had fixed duty hours and had attended the duty within that period and indeed did work. The moment this is established it is clear that they became entitled to "wages" as defined under the Payment of Wages Act. Wages include not only actual wages but also potential one. The employees do not earn wages, hour to hour or minute to minute. The contract of employment admittedly was subsisting in spite of the so called go-slow work. It is pertinent to note that no norms have been fixed either workman wise or department wise, to spell out the individual liability or responsibility to do particular quantity of work. In these state of affairs it seems to us that reduction of wages or of the emoluments on the allegation that the workers in general had resorted to go-slow is wholly impermissible in law, specially when they were not piece-rated employees. There can arise a case of settlement under which such deduction is specifically provided for. Different consideration may arise in such a case. Settlement in question contains no provision authorising the petitioner to deduct any part of the salary either on pro rata basis or to the bare statutory minimum for failure or refusal on the part of the employees to carry on their work in such manner as would bring particular production level.

This is not to suggest that the individual worker or the workers in general can commit misconduct and still can go scot-free. The standing orders as well as the terms of the settlement provide for remedy relating to such misconduct on the part of the employees. Remedies include, having disciplinary action, claim for damages on partial failure of consideration and complaining of unfair labour practice on the part of the employees to the appropriate Tribunal in terms of Maharashtra Act No. 1 of 1972. Shri Khambatta submitted that it was difficult to take disciplinary action against all the 600 workers. It was also submitted that Maharashtra Act No. 1 of 1972 does not provide for filing of complaint on the ground of unfair labour practice on the part of employees. The submission is based on the title part Schedule III of the Act which reads as follows :

"Unfair labour practices on the part of the Trade Unions." Shri Shetye invited our attention to some of the items in Schedule III for breach of which not the trade union but the employee alone could be held responsible. Our attention was also brought to S. 27 of the Act which prohibits not only the employer or the union but also employee from engaging in any unfair labour practice. Section 28 refers to the engagement of unfair labour practice "by any person" which means necessarily will include an individual employee or the employees in general. Under these circumstances and taking into consideration the whole scheme and object of the Act, it seems clear to us that Schedule III refers to the unfair labour practice not only on the part of the trade unions but also employees though the said word is absent from the caption. We agree with Shri Shetye that the Act in terms provide for taking action against individual employee or employees in general on the ground of unfair labour practice.

9. In the present matter, we are informed by the parties that the petitioner in fact had filed a complaint bearing ULP No. 351 of 1976 against the employees on the allegation that they had resorted to go-slow. This complaint came to be dismissed in default of the petitioner on 31st January, 1977. In the next year another complaint on the same ground was filed against the union which was Registered as ULP No. 8 of 1977 which came to be dismissed on 24-7-1978 the ground that it was defective and was not legally maintainable. At this very stage we may also notice one fact and it is to the effect that nearly a month after impugned notice dated 21-8-1975 the petitioner gave a notice of change in terms of S. 9A of the Industrial Disputes Act seeking to terminate the settlement. In view of this legal as well as factual position the grievance of the petitioner that it had no alternative than to resort to unilateral reduction seems to be hallow.

10. In our judgment, therefore, in the absence of a specific term in settlement or statutory provision an employer has no right to reduce the wages or the emoluments on the allegation that the workers had resorted to go slow tactics or had not performed their part of the obligation in a settlement. Applying this test to the present case we see absolutely no justification on the part of the management to issue the disputed notice dated 21st August, 1975 reducing the wages to the bare minimum fixed under the Minimum Wages Act and in going behind even the earlier agreement dated the 23rd January, 1971. It is clear that the management has proceeded on the assumption that the workers have indulged into serious types of misconduct. Reduction of wages under the circumstances is clearly a punishment. Such penal action is not permissible without holding necessary enquiry as it is violative of principles of natural justice. There is absolutely no justification for such action, specially when it has been taken unilaterally. After all pay packet is the property of the workman and there can be no deprivation of it except in due process of law.

11. Shri Khambatta, the learned advocate for the petitioners then submitted that a contract of employment in essence is nothing more than employer's obligations to pay day's wages and in return for a day's honest work put in by a worker. According to him if a workman absents himself or deliberately declines to perform and honest days work he cannot insist that nevertheless he should be paid his full days wages. In such a situation it cannot be said that there is deduction of wages as such or failure to implement a settlement under which the wages are paid. In support of this submission reliance was placed on few authorities. Our attention first was invited to the decision in Secretary of State v. Associated Society of Locomotive Engineers and Firemen and others, reported in [1972] All ER 949, with particular reference to the following passage in the said judgment.

"Suppose I employ a man to drive me to the station. I know there is sufficient time, so that I do not tell him to hurry. He drives me at a slower speed than he need with the deliberate object of making me lose the train, and I do lose it. He may say that he has performed the letter of the contract : he has driven me to

the station; but he has wilfully made me lose the train, and that is a breach of contract beyond all doubt. And what is more, he is not entitled to be paid for the journey. He has broken the contract in a way that goes to the very root of the consideration; so he can recover nothing."

12. Even taking the example quoted above, the question will be whether in such a case it is legally permissible in this country to unilaterally hold misconduct as proved and not pay the day's wages. To our mind, the answer is in the negative. Our attention was thereafter invited to the decision of the Calcutta High Court in the case of *Algemene Bank Nederland Vs. Central Government Labour Court and Others*, . In this particular case the management deducted pay for total absence from duty between 3 p.m. and 5.45 p.m. during which time the workers had absented to hold demonstration. Relying on the definition of "wages" under the Payment of Wages Act as it stood before the amendment in the year 1957 it was held that potential wages were not included in the term. The said decision deals with entirely different setting and circumstances and in our view is of no help in this petition, where we are concerned not with absence from duty but with allegation of low production by monthly or daily-rated workmen.

13. The last case on which reliance was placed is of the Division Bench decision of Madras High Court in the case of *V. Ramachandran Vs. Indian Bank*, . That was a case of deduction of wages in terms of S. 36 of the Tamil Nadu Shops and Establishments Act, 1947 which in terms permits deduction for absence from the place of work. On account of this glaring distinguishing feature it seems to us that even this decision is of no help to the petitioner. Shri Shetye placed reliance on the decision of the Calcutta High Court, in the case of *Monoj Kanti Bose and Others Vs. Bank of India and Others*, , in which more or less the similar point has been dealt with. It is held that the management had no unilateral right to cut wages on a pro rata basis for failure or refusal to carry on with the work during some time of the fixed hours of duty. Under the circumstances it does not appear that the principle "no work; no wages" can have any application to the facts of the present case.

14. Shri Khambatta had also contended that there can never be unfair labour practice unless mala fides or want of good faith exist. The proposition is too wide and general to be accepted. If there is a failure to implement settlement, that by itself is an evidence of mala fides, and/or want of good faith. We do not think that existence of financial difficulty or lowering of production level could be a good ground affording justification for failure to implement the settlement under the circumstances. The facts that the petitioner reduced the wages to less than even 1971 agreement and did neither prosecute the complaint against the employees nor took disciplinary action are pointers towards want of good faith in the present case. We may at this stage merely take note of the findings recorded by the Tribunal that low production was due to retrenchment of employees and reduction of quota of basic raw material. We will indicate our reasons for not disturbing them little later.

15. On the basis of S. 30(1)(b) of the Maharashtra Act No. 1 of 1972 it was submitted that even if unfair labour practice was proved, the Industrial Court was not obliged to grant the relief of issuance of direction of implementing the settlement. In lieu of that other reasonable relief such as compensation, etc. can be awarded to the employees. We do not think such a course under the circumstances would have been either legal or proper. The Tribunal has taken care to order implementation of the settlement only till the date of the closure of the company and no reason whatsoever exists for granting less than what was granted.

16. It was contended that in the present complaint which was at the behest of a single employee the general order of implementing the settlement in respect of all the workers cannot be passed. In the first place it does not appear that the parties treated the present matter as a individual dispute only. Even before the recording of the evidence commenced the union was added as a party in the writ petition. The relief claimed in the complaint was the general relief for all. From the affidavits filed on record by the petitioner also it is clear that the management has given evidence with relation to all the workers and the general conditions regarding indiscipline, loss of production, etc. Moreover, such a point was neither raised before the Tribunal nor has been raised in the writ petition. Under the circumstances we do not think it would be proper to permit the writ petitioner to raise this point for the first time before us during the course of hearing, specially when even from paragraph 23 of the petition it is apparent that interim payment as ordered was made by the petitioner to all the workmen during the pendency of the complaint and the various figures supplied for that purpose also related to all the workers in general. Moreover, under the scheme of the Act it seems to us that not only in individual worker but an investigating officer can also file a complaint making a grievance generally about all workers.

17. This takes us to the next point regarding low production due to go-slow. Voluminous evidence has been placed before the Tribunal in the form of oral as well as documentary evidence from which it does appear that the workers did indulge in acts of indiscipline, disorderly behaviour and even rowdisum. It also appears that they raised certain demands contrary to the settlement. It is possible that all these has contributed to the inefficiency and low production. While by no stretch of imagination what workers did in the factory can be justified, the basic question is whether the production had gone down only because of the attitude of the workers. The extent of that contribution cannot also be spelt out on the basis of material on record. The Industrial Tribunal has arrived at a finding of fact that the figures of production produced before related only to few departments and out of total 700 employees 116 were retrenched. The company's allotment of basic raw product - aluminium was reduced from 7390 metric tonnes to 2038 and there had been non-supply of even that allotted quantity. The Tribunal has also referred to certain inconsistent statements made by Shri Patil, the factory manager and under all these circumstances arrived at the finding of fact that burden of proof of justification for such drastic reduction

of the wages and other emoluments. We do not think that we can call this appreciation of evidence perverse so as to attract interference under Art. 226 of the Constitution, mainly because no oral evidence as such is adduced by the workers.

18. Shri Khambatta also attempted to argue that some time in December, 1976 during the pendency of the dispute before Tribunal there has been some settlement superseding the settlement of 1974. The Tribunal has given its decision in January, 1980 and affidavit of Shri Madhu Holmagi the officer of the petitioner was filed in the Tribunal on 5-7-1977 that is approximately after 7 months after the so called settlement. The settlement was admittedly not brought on record before the Tribunal nor any reference was made to it during the course of the hearing before the Tribunal. There is no reference to the settlement even in the present petition and under these circumstances it will be improper and unjust to take note of this so called settlement to which reference was made at the fag end of argument. Hence, it will not be proper to base our judgment on that aspect.

19. In the final result, the petition is dismissed and rule is discharged. Shri Shetye vehemently pressed for grant of cost and for a direction of grant of interest in the event of the petitioner not implementing the award within specific period. Considering the whole background and the attitude of the workers in general we are not inclined to grant the same. Shri N. C. Parekh asked for leave to appeal to the Supreme Court under Art. 133 of the Constitution. It is refused.