

(1969) 03 CAL CK 0015
In the Calcutta High Court
Case No : Matter No. 65 of 1965

Associated Electrical Industries Manufacturing Co. Private Ltd.	APPELLANT
Vs	
Fifth Industrial Tribunal and Others	RESPONDENT

Date of Decision : 07-03-1969

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(3)

Citation : AIR 1969 Cal 542 : 74 CWN 892 : (1970) 1 ILR (Cal) 513

Hon'ble Judges : A.K. Mukherjea, J

Bench : Single Bench

Advocate : Sankar Banerjee, for the Appellant;

Final Decision : Dismissed

Judgement

A.K. Mukherjea, J.—This is an application under Article 226 of the Constitution of India for quashing an order of reference made under the Industrial Disputes Act as well as all proceedings relating to the said order. The facts and circumstances of the case are shortly as follows: The petitioner is a private limited company and is a manufacturer of diverse kinds of electrical and allied goods. There are two registered Trade Unions of the workers of the petitioner company; one of them is known as the Staff Union and the other as the Workers' Union. The petitioner's workmen are either monthly rated or hourly-rated. In 1959 the petitioner paid ex gratia to its hourly-rated as well as monthly-rated workmen a sum equivalent to 1/8th of the basic wages earned by a workman as bonus for the year 1958. On August 25, 1960 the workers' Union demanded 3 months' basic wages as bonus for 1959; the Staff Union made no such demand. According to the petitioner, the profits made by the company during the previous year did not justify the award of any bonus at all. The dispute about the bonus for 1960 was referred to the Conciliation Officer for settlement. This led to the initiation of a Conciliation proceeding. According to the petitioner, the Staff Union knew all the time about this conciliation proceeding but they did not take any part in the proceedings. On 22 September 1960, there was a settlement between the petitioner-company

and its workmen which was arrived at as result of the conciliation proceeding. Under that settlement it was inter alia agreed that the petitioner would make an ex gratia payment of 1/18th of the basic wages earned by a workman as bonus for the previous year 1959. It was further agreed that the petitioner would as a special case and without creating any precedent waive recovery of advance made by the petitioner to its workmen under the memorandum of settlement dated 7th October, 1958 to the extent of 1/12th of basic wages earned during the year ending 31st October, 1957. On 22nd September 1960 the petitioner issued a notice intimating all its workmen that in terms of the aforesaid tripartite settlement 1/18th of the basic wages earned by a workman would be paid ex gratia as bonus for the previous year 1959. So far as the hourly rated workmen of the petitioner are concerned, they accepted the bonus in terms of the said notice. As for the workmen who are monthly-rated and who are represented by the Staff Union there was protest. According to the petitioner, however, a large number of such workmen also accepted the said bonus in terms of the said notice. Those workmen belonging to the Staff Union who refused to accept the bonus demanded payment of at least 1 months' basic wages as bonus. On 24 September 1960, the President of the Staff Union addressed a letter to the Labour Commissioner stating the grounds of their claim for bonus at the rate of 1 1/2 months' basic pay and requested intervention of the Labour Commissioner in this matter. By a letter dated 27th April, 1961, Government informed in reply to the aforesaid representation that the question of bonus for the year ended 31st October, 1959, had been settled with the Workers' Union and a tripartite agreement reached on 22 September 1960 under which the company had agreed to pay 1/18th of a workman's basic wages earned during the year ending 31st October, 1959, to all permanent workmen on the roll of the company on the date of payment. On this ground Government refused to intervene in this matter. Subsequently, it appears, Government published an order, being order

1987 -- I. R. No. ----- I. R./10L-112/62 dated 17th May, 1963 by which the dispute raised by the Staff Union regarding bonus for the year ending 31st October, 1959 was referred for adjudication to the Fifth Industrial Tribunal. The petitioner now contends that this reference was incompetent and illegal as the settlement of September 22, 1960 arrived at in course of conciliation proceedings was binding on all the workmen of the Company so that no further reference in law could be made on the same dispute. The petitioner raised this as a preliminary objection before the Industrial Tribunal and challenged the maintainability of the reference. The learned Industrial Tribunal after hearing the preliminary objections passed an order on 16th January, 1965 to the effect that the question whether the settlement dated 22 September 1960 binds all the workmen of the petitioner or not is a question of fact pure and simple and it was necessary to take some evidence for coming to a decision as to whether the settlement was binding on all the workmen or not. On this footing the Tribunal directed both the parties to adduce evidence in support of their contentions and fixed 25th March, 1965 as the date of hearing of this preliminary objection. The

petitioner has now challenged the legality of the reference and the proceedings in this application.

2. The principal contention urged by Mr. Sankar Banerjee appearing for the petitioner is that u/s 18(3)(d) of the Industrial Disputes Act the settlement which was arrived at between the company and the Workers' Union would also be binding on the members of the Staff Union and there could, therefore, be no dispute over the question of bonus covered by the settlement which can be referred to an industrial Tribunal or which can be adjudicated by an Industrial Tribunal.

3. Section 18 of the Industrial Disputes Act deals with the persons on whom settlement and awards are binding. Section 18(1) provides that a settlement arrived at by agreement between the employers and its workmen shall be binding only on the parties to the agreement where the settlement is one which is not reached in the course of conciliation proceedings. Section 18 (3), however, says that where the settlement in question is arrived at in the course of conciliation proceedings under the Act, that settlement, where the parties to the dispute are composed of workmen, is binding on "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 that establishment or part."

4. It is Sub-section (3) of Section 18 of the said Act on which the petitioner relies. The petitioner submits that the workmen of the company who are represented by the Staff Union are also persons employed in the "establishment" or "part of the establishment" to which the dispute relates on the date of the dispute. Therefore, the members of the Staff Union are also bound by the settlement that was arrived at between the workmen represented by the Workers' Union of the company even though the workmen represented by the Staff Union were not a party to the settlement arrived at in course of conciliation proceedings.

5. Mr. Banerjee relied on two Supreme Court decisions in this connection. One was the decision of the Supreme Court in Ramnagar Cane and Sugar Co. Ltd. Vs. Jatin Chakravorty and Others, . Gajendragadkar, J., as his Lordship then was, who delivered the judgment of the Supreme Court dealt with the scope of Section 18 (3) (2) of the said Act in that case. His Lordship held that a settlement arrived at by the members of a Union in course of conciliation proceedings would be binding even on workers who belonged to a rival Union. His Lordship observes: "In order to bind the workmen it is not necessary to show that the said workmen belonged to the Union which was a party to the dispute before the conciliator".

6. In another decision of the Supreme Court, namely, The Bata Shoe Co. (P) Ltd. Vs. D.N. Ganguly and Others, , the Supreme Court reiterated the same principle though on the facts of that case the Supreme Court held that it was not one

where the settlement had been arrived at with the assistance and concurrence of the conciliation Officer.

7. In applying the principles formulated by the Supreme Court in the instant case before us, I find that the only question that has to be decided is the question as to whether the persons who are represented by the Staff Union and whose dispute has been referred to the Fifth Industrial Tribunal are employed in the same "establishment" or "part of the establishment" to which the persons represented by the Workers' Union belong. If the answer to this question is in the affirmative, that is to say, if on a pure investigation of fact, it is found that the workmen represented by the Workers' Union and the workmen represented by the Staff Union are really employed in the same "establishment" or "part of the establishment" it is impossible to escape the conclusion that the settlement that was arrived at in course of the conciliation proceedings would be binding also on the workmen represented by the Staff Union even though they kept clear of the conciliation proceedings. The whole inquiry therefore, turns round a question of fact. As far as I have been able to ascertain, the terms of settlement have not been of equal incidence so far as these two groups of workmen are concerned. One of the terms of settlement that was arrived at on 22 September 1960 provided that the company would waive the recovery of certain advances made to the workmen under the memorandum of settlement dated 7 October 1958. Now, this advance had not been made to the employees belonging to the Staff Union. Therefore, the benefit that accrued because of the company's agreeing to waive the recovery of advance was a benefit that was confined only to the workmen represented by the Workers' Union. I am quite alive to the fact that this distinction by itself could make no difference if the workmen represented by both the Unions do, in fact, belong to the same "establishment" or "part of the establishment". This may be only one of the elements to be considered in deciding the question whether they belonged to the same establishment. I find from the judgment of the learned Fifth Industrial Tribunal that the learned Judge constituting that Tribunal has not yet come to a decision on this point. It is quite clear from his judgment that the learned Judge is aware of the legal issues involved. But in deciding that legal issue he has to come to a finding of fact and the learned Judge felt that he was not in a position to decide that question of fact merely on the basis of the two agreements which were before him. The learned Judge found it necessary to take some evidence for coming to a decision whether the agreement dated 22 September 1960 is binding on all workmen including the Head Office staff. It is true that the learned Judge does not clearly bring out the issue of fact as opposed to the issue of law. That is perhaps explained by the fact that the learned Judge's order of 10 January 1955 is a kind of interlocutory order. There is no reason to think that the learned Judge is not aware of the principles laid down by the Supreme Court that once there is a settlement arrived at in course of the conciliation proceedings that settlement will bind all workmen belonging to the same "establishment" or "part of an establishment" irrespective of the fact that some of the workmen

were not a party to the settlement and that they might be opposed to the settlement.

8. It may be remembered in this connection that in the Ramnagar Cane and Sugar Co. Ltd. Vs. Jatin Chakravorty and Others, the Supreme Court held that "if the conciliation proceedings in question are confined to specific demands limited to a specified class of employees the other workmen who are not interested in the said demand may not be bound by the said proceedings." This aspect of the matter was one which did not arise in that particular case before the Supreme Court. But if this question does arise, that question has to be decided before coming to a finding whether a settlement is binding on a particular group of workmen or not. This question is a question of fact. From that point of view, also it is, in my opinion, premature to challenge the order of the Tribunal. The Tribunal proposes to investigate into a question of fact before coming to its decision. Every Tribunal, as is well known, has, in the first instance, the right to decide its own jurisdiction, I do not see anything wrong in the Tribunal trying to decide the scope of its own jurisdiction and for that purpose to call for evidence.

9. In this view of the matter, I do not propose to interfere in the present proceedings. I should make it clear, however, that nothing that I say here should prejudice either of the parties before the Tribunal. The parties will be at liberty to give evidence called for by the Tribunal and it will be for the Tribunal to decide whether in the light of this evidence the employees of the Staff Union will be bound by the settlement arrived at on 22 September 1960. The application is dismissed. The rule is discharged but no order is made as to costs. The operation of this order is stayed for three weeks.