
(2000) 03 BOM CK 0060
In the Bombay High Court
Case No : Writ Petition No. 187 of 2000

Association of Engineering Workers	Vs	APPELLANT
WMI Cranes Limited and Another		RESPONDENT

Date of Decision : 06-03-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 3 BomCR 755 : (2000) 87 FLR 754

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : S.J. Deshmukh, instructed by N.M. Ganguli, for the Appellant; P.K. Rele and Kiran Bapat, for the Respondent

Judgement

F.I. Rebello, J.—Rule. Respondents waive service. Heard forthwith.

2. The petitioner Union by the present writ petition has impugned order dated September 9, 1999 passed on Exhibit U-2 rejecting the application for interim relief as also some other reliefs. The petitioner Union has filed the complaint which is numbered as 622/97. The complaint is filed under Items 1(a), (c), 2(a), (b), 4(a) and (f) of Schedule II of Items No. 5, 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. The petitioners also applied for interim relief. The interim relief as prayed for are as under:---

(a) That pending the hearing and final disposal of this complaint to direct the Company to forthwith permit S/s. S.A. Sawant and S.K. Doddamani to report for work;

(b) that pending the hearing and final disposal of this complaint to direct the Company to forthwith pay wages and benefits in terms of the settlement dated 1-12-96, to all the workmen whose names are stated in Exhibit "G" to the Complaint and to pay them arrears upto date and to continue to pay wages and benefits in terms of the said settlement.

These prayers were rejected by the impugned order:

3. The respondent No. 1 and respondent No. 2 another Union functioning in the Industrial establishment of respondent No. 1 had entered into a settlement dated 1st December, 1996. For the sake of highlighting what would be in dispute, certain clauses of the settlement, may now be referred to.

CLAUSE 22: BINDING EFFECT AND DECLARATION

That an employee wanting to accept benefits under this settlement shall be required to sign a Declaration Form a specimen of which is set out in schedule attached herewith to and marked Annexure "A".

CLAUSE 24: ARREARS:

That the arrears becoming payable to the workmen/staff under this settlement by way of adhoc amount for the period from 1-9-1996 to 31-12-1996 shall be paid on or before 31-3-1997 in maximum two installments.

The Company shall recover 10% of the arrears and adhoc amounts and 5% of bonus every year and remit to the union.

Clause 26:

The workmen/staff and/or Union shall not make any fresh demands during currency of this settlement involving additional financial burden to the company.

The workmen/staff covered by this settlement shall pay yearly subscription to Union.

Clause 27: PERIOD OF SETTLEMENT:

That the settlement shall remain binding upto 31-11-1999 on both the company, union and all workmen who are in the employment of the company on the date of signing of the settlement and also on those who could be employed hereafter. The existing facilities which are not specifically dealt with herein above, shall be continued without any hindrance.

In terms of Clause 22 a declaration had to be given which is Annexure "A" to the petition. I do not propose to reproduce the said declaration at this stage.

4. The petitioner is another union which is registered under the Trade Unions Act, 1926. For the sake of clarification I may mention that there is no recognised Union in the Industrial Establishment of respondent No. 1. The settlement clause referred to earlier was between the respondent No. 1 and respondent No. 2. By the interim application what the petitioner Union wants is that the benefits of the settlement entered into between the respondent No. 1 and respondent No. 2 should also be extended to them. In fact in the complaint before the Industrial Court it has been averred that the settlement contains several restrictive clauses and is not beneficial and not in the interest of the workmen. It is averred that the basic wages of the workmen have been stagnated for several years in the past and have not been revised even in the said settlement. It is then contended that the settlement has been made applicable only to the workmen who signed the

undertaking which is at Annexure "A" to the settlement. It is averred that the undertaking requires the workman to undertake to work peacefully and not to indulge in activities which are acts of misconduct as defined in S.O. It is submitted that such commitment on the part of the workmen is an implied condition of service and need not be reiterated every now and then at the brief of the employer. Clause 26 of the settlement, it is contended, compels the workers to pay subscription to the 2nd respondent, which means that the workmen who are members of the petitioner union are compelled to become members of the 2nd respondent union. It is then averred that the settlement has been arrived at in collusion between by respondent No. 1 and respondent No. 2. There is also a reference to two workers whose names are earlier set out and some disputes that they had.

5. At the hearing of the complaint it was contended that by making payment in terms of clause 24 and 26, the members of the petitioner Union will be forced to become members of the respondent No. 2. It may also be noted that the petitioner union has not raised any Industrial dispute that the settlement entered into between the respondents is not fair and/or bona fide. They have directly filed the complaint under M.R.T.U. & P.U.L.P. Act. It is also an admitted position that the settlement is not a settlement in conciliation and, therefore, not binding on all the workmen working in the Industrial Establishment. Considering the above, the petition may now be disposed of.

6. It is contended on behalf of the petitioners that the Industrial Court acted without jurisdiction in refusing to grant the relief as prayed for. It is contended that the petitioners were not bound to make contributions either under clauses 24 or 26 or for that matter give undertaking under Clause 22 as these would be restrictive clauses and as such amounting to unfair labour practice.

7. On the other hand on behalf of the respondent No. 1 it is contended that if the petitioner union wants its members to get the benefits in terms of the settlement they are bound to sign the declaration/undertaking as set out in Annexure "A" to the settlement.

On behalf of the respondent No. 2 it is contended that there is nothing arbitrary or unfair in Clauses like Clauses 22, 24 and 26. It is submitted that the respondent No. 2 having given benefits to the workers employed by the respondent No. 1, in Industrial Law, it is possible for the respondent No. 2 to claim if the workers want to avail of the benefit, contributions as set out in Clause 26, apart from taking an undertaking as set out in Clause 22.

After hearing learned Counsel, I propose to dispose of the petition and the question involved to the extent that they are relevant.

The first question is whether Clause 22 itself would amount prima facie to an unfair labour practice. As pointed out earlier the settlement between the respondent No. 1 and the respondent No. 2 is not a settlement in conciliation. In other words the workman employed with 1st respondent would not ipso facto be

covered by the said settlement. It is in that context that in Industrial Law other than the member of the Union which signed the settlement those others who want to avail of the benefits must give an undertaking that they are accepting the terms of the settlement. Therefore, giving such an undertaking considering the settled law and industrial jurisprudence as declared, would not amount to an unfair labour practice. The only question will be whether any modification would be required to the said undertaking, considering that this Court is dealing with a petition based on the rejection of an application for interim relief.

I propose to discuss and consider the submissions in so far as Clauses 24 and 26.

8. In so far as Clause 24 is concerned, it consists of two parts. The first part is in respect of deduction of 10% of the arrears of the adhoc amount and the second part is 5% of bonus every year to be remitted to the Union from those workers who have accepted the settlement. In so far as 10% of arrears is concerned, in my opinion, the issue should be covered by the judgment of the Apex Court in the case of *Balmer Lawrie Worker's Union, Bombay & another v. Balmer Lawrie and Company Ltd. & others* 1985(1) L.L.J. 314. The Apex Court in para 27 of the judgment has observed that :---

"The workmen who are members of a union may pay fees for membership but if by the action of the representative union all workmen acquire benefit or monetary advantage, the members and non-members alike can be made to make common sacrifice in the larger interest of trade union movement and to strengthen the trade union which by its activities acquired the benefit for all workmen. Payment to trade union fund in these circumstances can be styled as quid pro quo for benefits acquired."

On behalf of the petitioners their learned Counsel tried to distinguish the judgment on the ground that those objections must be restricted to cases of a representative union. I am unable to accept that distinction. Once persons who are not members of the Union which entered into the settlement want to avail of the benefit of the settlement considering the ratio of the judgment in *Balmer Lawrie Worker's Union* (supra) the contribution to the fund of the Union, which entered into the settlement can neither be said to be unfair nor a part of unfair labour practice.

That leaves us with the question of deduction of 5% bonus every year. In so far as the judgment of the Apex Court in *Balmer Lawrie Worker's Union* (supra), what was in issue was a one time payment to the Union for obtaining the benefit. The issue whether a clause like the second part of Clause 24 which directs continuous payment of 5% of bonus every year can be considered to be unfair labour practice or has not been covered by the judgment in *Balmer Lawrie Worker's Union* (supra). To my mind, therefore, this question will have to be left open to be decided in the complaint lodged by the present petitioners. Considering the fact that other workers based on the said clause are making payment to respondent No. 2 certain directions will have to be given pending the

hearing and final disposal of the complaint.

9. We now come to Clause 26. The first part of the clause is that the workmen/ staff and/or union shall not make any fresh demands during currency of this settlement involving additional financial burden to the company. In my opinion such a clause cannot be faulted. Once a company enters into a settlement it so enters to ensure industrial peace and harmony in its establishment for the period of the settlement. Courts cannot interfere in such a clause because ultimately it is the paying capacity of the industry which is considered whilst entering into settlement and the need for industrial peace. Therefore, in my opinion the first part of Clause 26 cannot be faulted and cannot be interfered with specially when this Court is exercising its extra ordinary jurisdiction under Articles 226 and/or 227 of the Constitution of India.

That leaves us with the other clause whereby the undertaking is compelled to deduct from the wages of the workmen the subscription on behalf of the respondent No. 2. Prima facie such a clause would amount to an act of unfair labour practice. The Union may enter into an agreement with the employer for deduction on behalf of its members if the members are so agreeable for the purpose of directly deducting membership dues from the wages. Such a clause cannot be foisted on unwilling workers or members of other unions. This would be destroying the very concept of a trade union movement and creating monopolies. Even considering the provisions of the M.R.T.U. & P.U.L.P. Act though the Act recognises a recognised Union and confers certain powers on the recognised Union, it does not and has not prohibited other Unions in the industry. Once that be so, prima facie Clause 26 must be held to be an act of unfair labour practice and the respondent No. 1 cannot compel the other workers of members of petitioner Union to give an undertaking to make deductions from their wages and contribute by way of membership to the membership of the respondent No. 2 of which they are not members.

10. At the hearing of the petition learned Counsel on behalf of the petitioners has submitted a draft of the letter which they propose to give to the respondent No. 1 to avail of the benefits. In my opinion there cannot be substantial changes from the undertaking given by the other workers save and except to the extent of the issue pertaining to bonus and payment of yearly subscription under Clause 26.

11. If the members of the petitioner Union seek to avail of the benefit which on giving an undertaking in Annexure "A" the respondent No. 1 was bound to give, I propose to modify the said undertaking during the pendency of the complaint. The undertaking to be given will be as under :---

"Sir,

I, the undersigned _____ Emp. No. _____ Department _____ state that I have been explained the contents of settlement dated 1-12-1996 between the company and Shramik Utkarsha Sabha, I accept the

terms and conditions thereof. I agree to abide by the decision given by the Industrial Court in Complaint Case No. 622 of 1997 in the matter of deductions of bonus in terms of Clause 24 and the payment of yearly subscription under Clause 26.

The declaration form is signed by me without any reservation, but subject to what is set out earlier.

I also undertake to work peacefully on my job as per the instructions given by my superior/superiors and do my normal work. I further undertake not to indulge in any activities which are act of misconduct as per the Model Standing Orders applicable to our company.

I am to request you to give me all benefits provided under the terms of settlement, I hereby permit you M/s. WMI CRANES LIMITED, to deduct 10% of arrears of adhoc payment as set out in Clause 24. In respect of deduction of bonus and membership fee, I will be bound by the decision of the Industrial Court."

It may be mentioned that the petitioner Union had sought to make changes in the draft in so far as the expression undertaking to work peacefully on the job as per the instruction given by my Superior/Superiors and do my normal work. A perusal of the complaint and the petition itself would show that the contention of the petitioners is that this being a part of their condition of service it may not be reiterated every time. Reiteration of such a clause in my opinion is necessary so that those who are covered by the settlement are aware of the terms and conditions of the service.

12. Considering the above, the petition can now be disposed of by crystallizing the reliefs.

(1) The respondent No. 1 to pay to the members of the petitioner Union on they signing the declaration as set in the judgment the arrears as worked out in case of other workers, who have accepted the settlement. The respondent No. 1 would be entitled to deduct therefrom 10% of the adhoc amount of arrears and pay the same to the respondent No. 2.

(2) In so far as 5% bonus including the bonus as set out in clause 25, the 5% bonus already due and payable and bonus which may become due and payable, to be deducted from the members of the petitioners union who avail of the settlement and be deposited with the Industrial Court from time to time. On such deposit the Industrial Court invest it in any Nationalised Bank for the period which it thinks fit after hearing the petitioners and respondents. Amount to be paid as per final order.

(3) There will be stay in so far as the recovery of yearly subscription as contemplated under Clause 26 pending the hearing and final disposal of the complaint.

(4) Arrears to be paid within 8 weeks from today. The respondent No, 1 company to assist the workers in so far as Income Tax liabilities are concerned.

(5) Rule made absolute in the aforesaid terms. There shall be no order as to costs.

All authorities to act on the copy of this order duly authenticated by the Associate of this Court.