

(2002) 05 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No. 1205 of 2002

Bennett Coleman and Company Ltd. and Another

APPELLANT

Vs

Narayan Atmaram Sawant and Others

RESPONDENT

Date of Decision : 02-05-2002

Acts Referred:

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

Citation : (2002) 5 BomCR 33 : (2002) 95 FLR 544 : (2002) 3 MhLj 732

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : S.C. Dharmadhikari, instructed by Kanga and Co, for the Appellant;
Madan Phadnis and Benny Joseph, instructed by Sanjay Udeshi and Co. for
Respondent No. 11, for the Respondent

Judgement

R.J. Kochar, J.—Heard the learned counsel of all the parties.

2. Rule. To be heard forthwith by consent of the parties as the petition can be disposed of at this stage itself.

3. The petitioner company is aggrieved by the impugned judgment and Order dated 25-2-2002 passed by the learned Member of the Industrial Court in Complaint ULP NO. 1087 of 1996 filed by 10 employees of the petitioner company, respondent Nos. 1 to 10 herein, under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the MRTU & PULP Act). It is held by the learned Member of the Industrial Court that the petitioner company has engaged in an unfair labour practice within the meaning of Item 9 of Schedule IV of the Act and has directed it to cease permanently from continuing to engage in the unfair labour practice and directed to pay the arrears of wages and benefits to be calculated in the terms of the settlement dated 30th December, 1989 between the petitioner company and the Mumbai Mazdoor Sabha the Recognised Union respondent No. 11, without obtaining any declaration from them. The Industrial Court further directed the petitioner company to pay the arrears to

them without insisting for any declaration from them but after deducting 5% of the gross arrears towards levy of the Recognised Union, respondent No. 11. The Industrial Court also restrained the petitioner company from recovering Rs. 48/- from the respondents Nos. 1 to 10 employees as membership subscription of the said Union.

4. The respondent employees had filed the said complaint of unfair labour practice before the Industrial Court for payment of arrears as directed by the Supreme Court of India payable under the Bachawat Award. It is not necessary for me to refer to the said Bachawat Award and the proceedings before the Supreme Court as the Bachawat Award has made an exception to any bilateral settlement between the parties, and therefore, the service conditions of the employees are to be governed by such bilateral settlement.

5. In the present case there is no dispute that the respondent No. 11, the Mumbai Mazdoor Sabha, a recognised union under the MRTU and PULP Act is functioning in the establishment of the petitioner company and is representing the employees employed by the petitioner company. There is also no dispute that there has been a bilateral settlement between the said union and the petitioner company signed on 30-12-1989 u/s 18(1) read with Section 2(p) of the Industrial Disputes Act, 1947 and Rule 62 of the Industrial Disputes (Bombay) Rules. The service conditions of the employees are governed by the said settlement and the same is binding on all the employees and also the petitioner company. The grievance of the respondents 1 to 10 employees was that the petitioner company had not given the benefits of the said settlement to them. It was also their grievance that the petitioner company was insisting on them to sign a declaration as prescribed in the Clause 20 of the said settlement read with Clause 22 and the form of declaration. According to the said employees they were entitled to get the benefits of the settlement without any declaration as prescribed in the said settlement. It was also their case that they were not the members of the recognized union and therefore, they opposed payment of 5% of gross arrears plus Rs. 48/- "towards Sabha"s levies" under Clause 22 of the said settlement as a condition to get the benefits thereunder. It is clear from the contention of the employees that they belonged to a rival union and that they did not subscribe to the philosophy of the recognised union and therefore they were opposed to give any donation and any levy to the said Union. As a matter of principle the employees insisted that they were entitled to get the benefits of the settlement without any deduction from their arrears either towards the donation or towards the Union"s levy or any membership subscription in the form of Rs. 48/- as indicated in Clause 22 of the said settlement. The respondents 1 to 10 therefore, were not given the-benefits of the said settlement.

6. The petitioner company defended the settlement and opposed the complaint on the basis of the settlement. According to the company, it was bound by the settlement and could not depart from any of the provisions of the settlement and if the company were to do so it would be committing an unfair labour practice

within the meaning of Item 9 of Schedule IV of the Act. The petitioner company, therefore, defended its action of insisting on the respondents 1 to 10 that they should sign a declaration in accordance with Clauses 20 and 22 of the settlement if any arrears under the said settlement were to be paid to them. The petitioners refused to pay any arrears under the settlement without there being any compliance by the said employees with the aforesaid terms of the settlements in particular.

7. The learned Member of the Industrial Court heard both the sides and passed an exhaustive and reasoned order and partly allowed the complaint. The learned Member of the Industrial Court held in favour of the employees that the petitioner company had engaged in the unfair labour practice within the meaning of Item 9 of Schedule IV of the Act. It further directed the petitioner company to pay the arrears to the employees without obtaining any declaration from them but after deducting 5% of the gross arrears towards the levy of the Sabha. The company was also restrained from recovering Rs. 48/- from them towards the Union's membership subscription compulsorily. The petitioner company is aggrieved by the said Order holding it guilty of the unfair labour practice. It, however, appears that it has no quarrel to make payment as directed by the Industrial Court.

8. Shri Dharmadhikari, the learned Counsel for the petitioner company has pointed out that under the settlement it was bound to insist on declaration from the employees before they were paid the arrears under the settlement. According to the learned Counsel, the petitioner company was bound by the said settlement while the Industrial Court wanted deviation from the said settlement, which was not permissible. The learned Counsel submitted that any breach of the settlement by the company would have invited wrath of the Recognised Union, which it could not afford to do so.

9. Shri Madan Phadnis, the learned Sr. Counsel who appeared on behalf of the respondent employees, has very fairly stated that his clients are not opposed to payment of 5% of the arrears payable under the said settlement to the recognised union as its levy. In his usual candidness the learned Counsel submitted that the Union which works for the workmen should get the funds so that it strengthens the unions financially to sustain its struggle in the interest of the labour, following the law laid down by the Supreme Court in the case of Balmer Lawrie Workers' Union, Bombay and Another Vs. Balmer Lawrie and Co. Ltd. and Others, . The learned Counsel, however, further submitted that no union can ever insist on or compel any workman to enrol himself or herself as its member. According to the learned Counsel his clients were totally opposed to become the members of the recognized union as they do not owe any allegiance to the principles of the said union and they were dedicated to the Marxist philosophy of their own union. However, the learned counsel agreed to pay an amount of Rs. 48/- as additional donation to the said Union. So that they cannot said to be in any way better off than the others. He however made it very clear

that the aforesaid amount of Rs. 48/- was not towards the subscription as membership of the recognised union. The learned counsel has fairly stated that his clients would accept the arrears after deduction of donation of 5% of the gross arrears and a sum of Rs. 48/- as additional donation to the Union. Shri Dharmadhikari has no objection so long as the aforesaid deductions are made from the arrears, as under the settlement the petitioner company was bound to deduct the aforesaid amounts from the arrears and hand over the said amount to the recognized union. According to Shri Phadnis it was not necessary to provide for any declaration to be given by the employees to say that they were bound by the settlement in question.

10. It would be beneficial to reproduce the relevant clauses in the settlement for our consideration. Clauses 20, 21 and 22 of the settlement read as under :--

20. That such of the employees who gives declaration a specimen of which is attached hereto and marked Annexure "A" duly signed in duplicate shall only be eligible to receive benefits under this Settlement.

And

That such declaration shall have to file with the company and the Sabha on or before 31st January, 1990.

21. That such of the employee who do not wish to sign the declaration per Clause (20) hereinabove and who does not actually sign the same on or before 31st January, 1990 shall not be eligible to receive from the company benefits of additional one increment for service of fifteen years and more and shall also not be eligible to receive benefits under Clauses (1), (11), (12)(A) & (B), (14), (16) & (17) hereinabove.

That for such workmen who do not sign the declaration the company shall best liberty to apply such class and grades of pay under such class as the company.

22. That payments of arrears of wages under Clause No. (6) lumpsum payment under Clause No. (10) and arrears of allowance under Clause No. (11) shall become due and be made into equal installments one on 15th February 1990 and on 15th April 1990 after deducting therefrom 5% gross arrears plus Rs. 48/- towards Sabha's levies. Clause 21 sounds to be mandatory in the body of the settlement as it states the consequence of failure to sign a declaration under Clause 20 was to deny the benefits under the settlement to the extent of additional one increment for service of fifteen years and more and further to deny the benefits under several other clauses mentioned in Clause 21. By virtue of the said Clause 21 it was virtually made compulsory for every workman to sign such a declaration to get the benefits of the settlement. Clause 21 prescribes the consequence of failure of declaration was that the benefits of the settlement will not be extended to those workmen who did not sign such declaration. Clause 22 of the settlement further prescribes the payments of arrears of wages under Clause 6 and Clause 10 to be made only after deducting

therefrom 5% gross arrears plus Rs. 48/- "towards Sabha's levies". There is a form of declaration with the settlement which is required to be signed in duplicate by every workman and to be given to the Company and to the Union who wants the benefits of the settlement. The squatter was that those who did not sign the prescribed declaration were denied the benefits of the settlement though they were otherwise bound by it.

11. As far as the law in respect of the settlement between the employer and the recognized union is concerned it is crystal clear u/s 18 of the Industrial Disputes Act, 1947, that every settlement signed by the employer and the recognized union is binding on all the employees in the establishments. It would be relevant to read the said section as a whole,

18. Persons on whom settlements and awards are binding. -- (1) A settlement arrived at by agreement between the employer and workman otherwise than in the Course of conciliation proceeding shall be binding on the parties to the agreement.

[Provided that, where there is a recognised union for any undertaking under any law for the time being in force than such agreement (not being an agreement in respect of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee) shall be arrived at between the employer and the recognised union only; and such agreement shall be binding on all persons referred to in Clause (c) and Clause (d) of Sub-section (3) of this section].

(2) [Subject to the provisions of Sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration].

[(3) A settlement arrived at in the course of conciliation proceedings under this Act [or an arbitration award in a case where a notification has been issued under Sub-section (3A) of Section 10A] [or an arbitration award in case where there is a recognised union for any undertaking under any law for the time being in force] or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable] shall be binding on.

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, (arbitrator) [Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause.

(c) where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates.

(d) Where a party referred to in Clause (a) or Clause (b) is composed of workmen, all persons who are 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.

Section 18(1) of the Act makes it abundantly clear that a settlement with the recognised union is binding on all the parties mentioned in Section 18(3)(d) i.e. all the present workmen employed and also on the workmen who would be employed in future.

12. In my considered opinion, therefore, the declaration as prescribed in Clause 20 is totally redundant and irrelevant. It is not at all necessary for an employee or a workman to sign such declaration that he is bound by such settlement. Even in the absence of such declaration he is bound by such settlement between the employer and the recognized union whether he is a member of the recognised union or not. To insist on such a declaration that he is bound by the settlement is to insist on a declaration that he is bound by the Industrial Disputes Act or that is bound by the MRTU and PULP Act ! I am therefore of the opinion that the main portion of the settlement is upto Clause 19. The last Clause 19 stipulates the period of duration of the settlement. That portion of the settlement is mandatory. Clause 20 which talks of declaration and Clause 21 which talks of failure to sign such declaration both are irrelevant and are of no legal significance. As far as Clause 22 is concerned the law laid down by the Supreme Court in the Balmer Lawrie's case (supra) clinches the issue that the payment of donation by the workman is in the form of "quid pro quo" that is to say, that, if a workman wants an advantage of the settlement arrived at by the union it must pay some price for the same. In the said case the donation was 15% of the total arrears. In the present case the recognised union appears to be very reasonable when it has insisted only for 5% of the gross arrears. In my opinion even the recognized union cannot insist for membership subscription to be paid by the workmen compulsorily. No union can insist that every workman must enrol himself or herself as its member and pay its subscription under the duress or coercive factor of the extension of the benefits of its settlement. It is at the volition of every workman to enrol himself or herself as the member of even a recognised union. Such insistence according to me is against the free will of the employee and violative of Article 19(1)(C) of the Constitution of India as has been rightly held by the Industrial Court. If the settlement is binding on every workman as a matter of law the recognized union cannot prescribe any consequence of failure to sign such declaration to deprive the workman of the benefits of such a binding settlement on account of his failure to sign such so called declaration that he is bound by the settlement. The Industrial Court is right in its finding that no union can compulsorily insist to get subscription of its membership. Besides, u/s 18(3) of the Industrial Disputes Act requirement to pay donation cannot be a matter which relates to the dispute which forms subject matter of the reference for adjudication or the settlement of the Industrial Disputes referred for adjudication. The payment of donation is an incidental factor to the settlement. The intention of such declaration or such clauses is only to require the beneficiary of the settlement to acknowledge the work done by the union for

which it was required to struggle and even spend from its funds and therefore he should pay the amount of donation for the work done by the union in the interest of the workers. Under the garb of such declaration no union however, can compulsorily collect any membership subscription from any one. To do so would be only to exact money from the workman under the duress or coercion that he will not get the benefits of the settlement which are long term benefits and which are not of minor or negligible nature. Membership of a union has always to be voluntary and never compulsory or under duress or coercion.

13. No recognised union can say that a workman will be allowed the benefits of the settlement only if he signs a declaration or that he is or becomes the member of such union as the law extends all the benefits to all the employees covered by such settlement between the employer and the recognised union. In these circumstances the Industrial Court was right in holding that the insistence of the union on the respondents 1 to 10 to sign a declaration was not legal and proper. It is, therefore, not necessary and not required under the law for either the employee or workman covered by the settlement between the employer and the recognised union to give or for the employer and the union to insist or seek any declaration that he was bound by such settlement before he is extended or given the benefits of the settlement. He is not only entitled to get all the benefits of the settlement but he is also bound by the obligations and responsibilities prescribed thereunder. If under the settlement he is required to pay any amount by way of levy or donation mentioned before he is given the advantage of such settlement he will have to comply with the same without demur as laid down by the Supreme Court in the case of *Balmer Lawrie* (supra). No separate undertaking or declaration from the workmen is required. The recognised union cannot and should not, however, compel any workmen to become its member as a condition to get the benefits of the settlement as such a condition would defeat the provisions of the settlement to be binding on all the workmen as a matter of law u/s 18 of the Industrial Disputes Act, 1947. Nor the recognised union can insist upon the employer to get a declaration, like in the present case, from the workmen that they are bound by the settlement to be eligible to get the benefits under the settlement. There can be no other condition, direct or indirect, except a condition of payment of reasonable amount of donation or levy payable to the recognised union, for the workmen to get the benefits of the settlement. The employer is per se bound to extend such settlement to all the workmen covered by the settlement unconditionally as per the law. Even if such conditions to the effect of depriving or threatening to deny the benefits of the settlement to the workmen unless they fulfil such conditions like the declarations by them are mentioned in the settlement they are to be treated as directory or optional and are to be ignored as otherwise it would violate Section 18 of the Act. If the employer extends the benefits of such settlement without getting the declarations as prescribed in the settlement in the present case, he will not be guilty of the unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act, If he does so he would be violating the mandate of Section 18 of the

Industrial Disputes Act.

To summarise the legal position :

(a) A settlement between the employer and a recognised union is binding on all the workmen whether members or not of the union; and the employer and the union, both are bound by the settlement and are bound to give all the benefits of such settlement to all the workmen unconditionally;

(b) The recognised union cannot put any preconditions on the workmen to become eligible to get the benefits of the settlement. viz. membership of the union or giving of a declaration directly or indirectly making it obligatory for workmen to become its members under compulsion to get the benefits of the settlement as has exactly happened in the present case.

(c) Such a settlement may provide for condition of payment of union's levy or donation on some reasonable basis as laid down in the case of Balmer Lawrie (supra) and it is certainly obligatory for the workmen to pay such levy or donation to the recognised union to get the benefits or advantage of such settlement. A quid-pro-quo principle to be accepted by the workmen to get the fruits of the struggle of the Union.

(d) If the workmen do not give such declaration though demanded by the employer under the settlement neither the workmen nor the employer can be accused of violating the settlement. The employer cannot be held guilty of unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act at the instance of the recognised union if the employer applies such settlement to such workmen who do not give the prescribed declarations as has been done in the present case.

14. In the aforesaid circumstances I do not find the petitioner company to be guilty of any unfair labour practice as obviously it was bound by the letter of the settlement. It could not have dared to displease the recognised union by applying the settlement to the respondents 1 to 10 in the absence of declaration from them. Apparently the approach of the petitioner company cannot be said to be unfair. It was in a dilemma or real fix and therefore it cannot be accused of an unfair labour practice of any nature.

15. I also place on record the healthy approach adopted by the learned counsel appearing for the respondent Nos. 1 to 10 to have volunteered to make payment of levy/donation @ 5% of the arrears payable to them under the settlement. I also appreciate the calculated and decent silence maintained by the recognised union, the Mumbai Mazdoor Sabha, respondent No. 11. It has not taken any unreasonable stand in the matter. Rule is made absolute as above.

16. The petitioner company is hereby directed to pay to the respondents 1 to 10 the arrears under the settlement dated 30-12-1989 after deducting 5% of the gross arrears of payment under the said settlement and also an additional amount of Rs. 48/- as additional donation to the said union by the said

employees. The petitioner company shall not insist on them to sign any declaration as prescribed in Clause 20 of the said settlement. The petitioner company shall make such payment within eight weeks from today. The respondent Nos. 1 to 10 have been deprived of their legitimate benefits under the settlement for a very long period of more than a decade. The said amount was with the petitioner company in active use. It will be unjust to deny the respondents 1 to 10 employees of a reasonable amount of interest on the said amount. I, therefore, direct the petitioner company to pay interest @ 9% p.a. till payment. It is clarified that the 5% levy will be on the arrears and not on the interest amount. The petition is disposed of as above.

17. All the parties to act on an ordinary copy of this order duly authenticated by the Associate of this Court.

Certified copy is expedited.