
(2008) 04 BOM CK 0015
In the Bombay High Court
Case No : O.O.C.J.W.P. No. 191 of 2008

Biddle Sawyer Limited

APPELLANT

Vs

Chemical Employees Union

RESPONDENT

Date of Decision : 02-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33C, 33C(2), 36A
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 50

Citation : (2008) 3 LLJ 983

Hon'ble Judges : Abhay S. Oka, J

Bench : Single Bench

Advocate : Shailesh Pathak, for the Appellant; Arshad Shaikh, instructed by Sanjay Udeshi and Co., for the Respondent

Final Decision : Dismissed

Judgement

Abhay S. Oka, J.—I have heard the submissions of the learned Counsel appearing for the parties on March 31, 2008. By this writ petition under Article 226 of the Constitution of India the petitioner-employer has taken an exception to the judgment and order dated March 3, 2007 passed by the learned Member of the Industrial Court. The impugned judgment and order has been passed on a complaint filed by the respondent-Union u/s 28 read with Item 5 of Schedule II and 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 said Act of 1971).

2. With a view to appreciate the submissions made by the learned Counsel appearing for the parties, it will be necessary to: briefly refer to the facts of the case.

3. The prayer in the complaint filed by the respondent was for a direction to the petitioner to implement the award dated November 29, 1999 read with

settlement dated July 14, 1990 to pay Ganesh festival advance of Rs. 800/- per workman for the year 2000 and to restrain them from recovering the Ganesh festival advances already paid. There is also a prayer for refund of recovered amount of Ganesh festival advance with interest thereon at 18% per annum.

4. Reliance has been placed by the respondent on the earlier settlements dated September 25, 1987 and July 14, 1990 and award dated January 29, 1999 passed by the Industrial Tribunal in Reference (IT) No. 31/1997. Reliance has been placed on Clauses Nos. 21 and 16 of the earlier settlements at Exhibit U-30 and U-31 which provide that the petitioner company shall pay effective from the year 1990 and thereafter every year, 10 days before the Ganesh festival, Ganesh festivity advance of Rs. 480/- and that the said amount shall not be recovered. Reliance is placed on the aforesaid award dated January 29, 1999 by which the Industrial Tribunal granted the demand for payment of Ganesh festivity advance at the rate of Rs. 800/-.

5. The dispute started as a result of the staff notice issued by the petitioner on August 13, 1999 informing the workmen that the Ganesh festival advance of Rs. 800/- will be recovered in two monthly installments from the wages payable for the month of October 1999 and November 1999. Similar staff notice was issued on August 9, 2000. That is the reason why a complaint was filed by the respondent-Union u/s 28 of the said Act of 1971 alleging that the petitioner has indulged in unfair labour practices under Item 5 of Schedule II and Item 9 of Schedule IV. By the impugned judgment and order the learned Member of the Industrial Court held that the petitioners have engaged in unfair labour practice under Item 9 of Schedule IV of the said Act of 1974. The operative part of the impugned order dated August 3, 2007 reads thus:

1....

2 It is hereby declared that, by deciding and by recovering the Ganesh Festivity amount paid to the workmen in equal two installments from the salary of the employees as per staff notices dated August 30, 1999 and August 9, 2000 i.e. Exhibit U-35 and Exhibit U-37 in breach of settlement and awards at Exhibit U-30 to Exhibit U-32 the Respondents have engaged into unfair labour practices under Item 9 of schedule IV of the MRTU and PULP Act, 1971.

3. The respondents are hereby directed to cease and desist from above reported unfair labour practices and to take affirmative action by not recovering the amount paid to the workmen towards Ganesh Festivity advance and to refund already recovered: amount of advance from the salary of the workmen, within 60 days from the date of the receipt of this order, in default, to pay 9% simple interest on the same from the date of this order.

4. Remaining prayer of the complainants is hereby rejected.

5....

6. The learned Counsel appearing for the petitioner has taken me through the

relevant portions of the earlier award dated January 29, 1999 and in particular paragraph No. 167 thereof. The submission is that the said award totally replaces and substitutes the earlier settlement pertaining to Ganesh festival advance. It is submitted that the award makes it clear that the said amount of advance will not be an allowance but it will be an advance. He has also taken me through the findings recorded in; the impugned judgment and order. His submission is that in the year 1999 deduction was made from the wages on account of payment of advance of Rs. 800/- and that the said action was not challenged. His submission is that while dealing with a complaint u/s 28 of the said Act of 1971 read with Item 9 of Schedule IV of the said Act of 1971, the learned Judge has tried to interpret the earlier award which has attained finality and such a course was impermissible.

7. The learned Counsel appearing for the petitioner placed reliance on a decision of learned single Judge of this Court in the case of *Balmer Lawrie and Co. Ltd. v. S.M. Limaye* (1992) LIC 205. He submitted that this Court has made a distinction between "failure to implement the award" and mere non-implementation of settlement. He invited my attention to paragraph No. 14 of the said decision. He submitted that on plain reading of paragraph No. 167 of the earlier award dated January 29, 1999 which has attained finality, there was no scope for putting an interpretation that the amount payable by way of Ganesh festival advance cannot be recovered by the petitioner.

8. He submitted that the learned Member While deciding the complaint filed by the respondent has purported to re-adjudicate upon the issue which has been finally adjudicated upon by the earlier award. His submission is that on plain reading of the earlier award, by no stretch of imagination, it can be said that there is any failure to implement the award. He, therefore, submitted that the impugned judgment and order deserves to be quashed and set aside.

9. The learned Counsel appearing for the respondent submitted that paragraph No. 167 of the earlier award cannot be read in isolation and the same will have to be read alongwith paragraph No. 175. It is made clear in the paragraph No. 172 that there will not be any adverse effect on the other terms and conditions which are not covered under the reference No. 31/1999 which the workmen concerned were getting. He submitted that if the submission made by the learned Counsel appearing for the petitioner is accepted, the petitioner-employer will be entitled to recover even the sum of Rs. 480/- which was agreed to be paid under the earlier settlements. He submitted that the petitioner-employer never sought any modification of that part of the earlier settlement which provides for grant of Ganesh festival advance or Rs. 480/- with a rider that the same shall not be recovered. His submission is that on plain reading of paragraph No. 167 of the earlier award it is very clear that amount of Rs. 480/- provided in the earlier settlement has been enhanced to Rs. 800/- by accepting the demand made by the respondent. He submitted that while deciding the complaint the learned Judge had jurisdiction to interpret the earlier award. He placed reliance on a

decision of the Apex Court in the case of Voltas Ltd. Vs. J.M. Demello and Another, and submitted that even while deciding proceedings u/s 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act of 1947) it has held that though proceedings u/s 33-C(2) are analogous to execution proceedings, the Labour Court has power to interpret the concerned award.

10. He also placed reliance on another decision of the Apex Court in the case of The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., in support of this petition. He submitted that the scope of adjudication in the proceedings which are on par with execution proceedings has been laid down by the decision of the Apex Court. He pointed out that in this decision the Apex Court has held that in proceedings u/s 33-C(2) an award can be interpreted. He submitted that in a complaint u/s 28 of the said Act of 1971 alleging non implementation of earlier award, the earlier award has to be interpreted. He also invited my attention to the provisions of Section 50 of the said Act of 1971. His submission is that no other interpretation can be given to the earlier award made by the Tribunal. Lastly, he submitted that in view of decision of the Division Bench of this Court in the case of Executive Engineer (Elec.Div.) P.W. and Health Department, Nagpur and Anr. v. Prakash Devidas Kalasit 1985 (51) Bombay, H.C. Nagpur Bench Page 553 motive or mens rea is not required to be established for the holding employer responsible for indulging in or to have indulged in unfair practices.

11. The learned Counsel appearing for the petitioner by way of reply submitted that the decisions relied upon by the learned Counsel appearing for the respondent dealing with the scope of adjudication u/s 33-C(2) of the said Act of 1947 will not help the respondent in as much as the scope of adjudication while deciding a complaint alleging unfair labour practice under Item 9 of Schedule IV of the said Act of 1971 is completely different. He submitted that the learned Member of the Industrial Court has exceeded the jurisdiction vested in him while passing impugned order.

12. I have given careful consideration to the submissions made by the learned Counsel appearing for the parties. It will be necessary to refer to the award dated January 29, 1999 passed by the Industrial Tribunal. The perusal of the award shows that one of the demands of the Union was relating to Ganesh festival allowance. While dealing with the said demand, in paragraph No. 167 the learned Member has held thus:

767. The next demand for Ganesh Festival allowance, wherein it has been demanded that from 1994, every year 10 days before Ganesh Festival the allowance of Rs. 800/- should be paid every year. In the statement of claim, the demand has been justified on the ground that the first party Company has already in principle agreed to pay Ganesh Festival advance of Rs. 480/-. It has been further stated that this Festival is celebrated by a large number of workmen and considering financial conditions, the first party company can easily bear the increase of burden of Rs. 320/- every year. It has been opposed by the first party company and stated that granting of such demand would place extra financial

burden of Rs. 800 per worker per annum. It cannot be ignored that in Mumbai, the Ganesh Festival is being celebrated on large scale and maximum persons take part therein. It is also not disputed that during the course of submissions that the workmen class is more active in such festival. When admittedly the first party company is paying Rs. 480/- as Ganesh Festival advance as per the last settlement of 1990. I think it will be just and proper and reasonable to enhance the said amount to some extent, considering overall price rise all necessities of the livelihood. So also other articles necessary for celebrations of the said festival, though in demand raised on behalf of the union Rs. 800/- has been demanded as Ganesh Festival allowance. It will not be proper to grant the said amount as allowance but that such amount can be granted as advance. Granting of that demand in this fashion will meet the ends of justice for both parties concerned. Therefore, demand for payment for Ganesh Festival of Rs. 800 by way of advance is hereby granted and not by way of allowance.

13. It must be noted here that the earlier settlements dated September 25, 1987 and July 14, 1990 were placed on record. The relevant Clauses of the said settlements provide that the petitioner-Company shall pay effective from the year 1990 and thereafter every year Ganesh Festival advance of Rs. 480/- and the said amount shall not be recovered. Thus, what was agreed to be paid was by way of advance of Rs. 480/- which amount was not to be recovered from the workmen. Paragraph No. 175 of award dated January 29, 1999 reads thus:

775. It is made clear that there will not be any adverse effect on the other terms and conditions, which has not covered under the present reference, which the workmen's concerned are presently getting.

14. The learned Counsel appearing for the respondent had placed reliance on a decision of the Apex Court in the case of *Voltas Limited v. J.N. Demello and Anr.* (supra) In paragraph No. 13, the Apex Court has held thus:

13. The question as to the scope of jurisdiction of a Labour Court u/s 33C(2) has been a subject-matter of several decisions of this Court. It is not necessary to go into those decisions once again as in *Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others*, , all those decisions were examined and the propositions deducible from them were formulated. As stated in propositions (5) and (8), proceedings u/s 33-C(2) are analogous to execution proceedings and a Labour Court called upon to compute benefits claimed by a workman is in the position of an executing Court and as such competent to interpret an award where there is a dispute as to the rights thereunder or as to its correct interpretation. Obviously, if the award is unambiguous the Labour Court is bound to enforce it, and under the guise of interpreting it, it cannot make a new award by adding to or subtracting anything therefrom. Although it cannot go behind the award, it is nevertheless competent to construe the award where it is ambiguous and to ascertain its precise meaning, for, unless that is done, it cannot enforce the award when it is called upon to do so by an application u/s 33-C. As held in *Central Bank of India v. P.S. Rajagopalan* (supra), a claim u/s 33-C(2) postulates

that the determination of the question about computing in terms of money may in some cases have to be preceded by an inquiry into the existence of the right. Such an inquiry is incidental to the main determination assigned to the Labour Court by that sub-section.

15. While inquiring into the question as to the existence of such a right, and construing award, the Labour Court can look into the demand by the workmen in order to ascertain whether the award under which the right is claimed was or was not beyond the scope of the demand; in other words, whether the award was within jurisdiction, cf. also *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, . This position was conceded by Mr. Tarkunde." He has also placed reliance on decision of the Apex Court in the case of *Central Bank of India Ltd. v. P.S. Rajagopalan* (supra) and in particular paragraph No. 18 which reads thus:

18. Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court; but like the executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim u/s 33-C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination u/s 33-C(2) it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests.

The said submission made by the learned Counsel appearing for the respondent was countered by the learned Counsel appearing for the petitioner by placing reliance on Section 36-A of the said Act of 1947 which reads thus:

36A. Power to remove difficulties.- (1) If, in the opinion of the appropriate Government, any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Labour Court, Tribunal or National Tribunal as it may think fit.

(2) The Labour Court, Tribunal or National Tribunal to which such question is referred shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties.

He submitted that in case there was any doubt about the interpretation of earlier award dated January 29, 1999, a reference u/s 36-A of the said Act of 1947 ought to have been sought.

16. Before advertng to this aspect, it will be necessary to consider whether there is any difficulty or doubt as regards the interpretation of the award dated January 29, 1999.

17. It is not in dispute that the earlier settlement gave benefit to the workmen of

the Ganesh Festival advance of Rs. 480/- which amount was admittedly not recoverable. If paragraph No. 167 of the said earlier award is-perused, the learned Member of the Tribunal has specifically noted the submission made by the petitioner-Company that grant of said demand can place extra financial burden of Rs. 800/- per worker per annum. Before noting the: said submission, the contention of the Union has been noted that the Company can easily bear the increase of burden of Rs. 320/- every year. The submission made on behalf of the petitioner-Company that the demand to increase the advance by Rs. 320/- will put extra financial burden gives sufficient indication as to how the said demand of Union was understood by the petitioner. It is obvious that the petitioner-Company understood the demand to mean that if the festival advance is enhanced from Rs. 480/- to Rs. 800/- it would place extra financial burden of Rs. 320/- per worker per annum.

18. Thus, even the petitioner-Company was aware that if such demand was accepted by the Tribunal it would place extra financial burden. Such a submission has been made as the parties had understood the demand of enhancement of the advance to mean that it will be a non-recoverable advance. The earlier settlements also purport to grant a sum of Rs. 480/- per worker as an advance and not as an allowance with a rider that it will not be open for the petitioner to recover the said amount of advance from the workmen. The learned Member of the Tribunal noted that admittedly the petitioner-Company was paying Rs. 480/- as Ganesh Festival advance as per the last settlement of 1990 and it will be just and proper to enhance the said amount to some extent considering the overall price rise of all necessities of the livelihood. Thus, by the earlier award the demand which is accepted is of enhancing the existing advance/allowance of Rs. 480/- to Rs. 800/- without modifying any other terms and conditions incorporated in the earlier settlement which was binding on the petitioner-Company, Paragraph No. 175 of the said earlier award reiterates that the award will not have any adverse effect on the other terms and conditions which are not covered under the reference which the workmen concerned were presently getting.

19. The said award dated January 29, 1999 does not record that there was a contention raised by the petitioner that the Ganesh Festivity advance/allowance should be made recoverable thereby enabling the petitioner to recover the said amount by making a deduction from the wages. Therefore, on plain reading of the said award, there is no scope for any doubt or difficulty in interpreting the said award. Thus, it is crystal clear that advance of Rs. 480/- per workmen which was a non recoverable advance was enhanced to Rs. 800/-. If the interpretation sought to be put by the petitioner is accepted, the petitioner will be entitled to recover even the sum of Rs. 480/- which admittedly cannot be recovered as per the earlier settlement.

20. It will be necessary to refer to the findings recorded by the learned Member of the Tribunal in the impugned judgment and order. In paragraph No. 15, the

learned Member has held thus:

It is also not in dispute that paragraph 167 of the Award in Reference (IT) No. 31/1997 dated January 29, 1999 is silent on this points and it is not mentioned in the award whether the Ganesh Festival Advance granted to the tune of Rs. 800/- is recoverable or not recoverable and therefore, both the parties interpreted the award which suits to them. But in paragraph No. 175 of the Award the Honourable Member has made it clear that there will be no adverse effect on the terms and conditions, which the concerned workmen were getting at the time of award.

21. In paragraph No. 16, the learned Member of the Tribunal has noted that the petitioner-Company opposed the demand of festival allowance as the same would place extra financial burden of Rs. 800/- per worker per annum. In paragraph No. 17 the finding, recorded by the learned Member of the Tribunal reads thus:

...Hence in the light of material on record and in the light of observations made above I am of the considered opinion that, the complainant has proved that by issuing staff notices dated January 30, 1999 and August 9, 2000 i.e. Exhibit U-35 and Exhibit U-37 for recovery of advance amount it took equal installments, the respondents have committed breach of settlement dated July 14, 1990 at Exhibit U-30 and Exhibit U-31 and also the Award of Industrial Tribunal in Reference (IT) No. 31/1997 dated January 29, 1999 and thereby engaged in unfair labour practices under Item 9 of schedule IV of the MRTU and PULP Act, 1971. However complainant has failed to prove unfair labour practices under Item 5 of Schedule II of the Act. Hence, I answer issue No. 1 in partly affirmative. In the light of answer to issue No. 1 in partly affirmative, respondents are hereby directed to cease and desist from reported proved unfair labour practices and to take affirmative action by not recovering the amount paid to the workmen towards Ganesh Festival advance and to refund the amounts of festival advance already recovered from the workmen within 60 days from the date of the receipt of this order workmen at Exhibit U-9 are at liberty either to press or not to press their claim with the respondents.

22. While dealing with the complaint u/s 28 alleging non-compliance with earlier award, the Tribunal has to consider the nature and meaning of the earlier award. As held earlier, the award dated January 29, 1999 leaves no scope for any other interpretation save and except the interpretation made by the impugned order. In fact that is the only possible interpretation and there is no difficulty or doubt as regards the interpretation of the said earlier award. Therefore, the submission made by the learned Counsel appearing for the petitioner that recourse should have been taken to Section 36A of the said Act of 1947 cannot be accepted. Therefore, the petitioner could not have recovered the advance of Rs. 800/- by making deduction from the wages. The said action was in breach of the Award and earlier settlement.

23. In my view, there is no error committed by the learned Member of the

Industrial Court. There is no scope to interfere with the findings recorded by the learned Member in this petition u/s 226 of the Constitution of India.

24. There is no merit in the petition and the same is accordingly dismissed with no orders as to costs.