
(2009) 03 BOM CK 0065

In the Bombay High Court

Case No : Appeal No. 346 of 2008 in Writ Petition No. 191 of 2008

Biddle Sawyer Ltd.

APPELLANT

Vs

Chemical Employees Union

RESPONDENT

Date of Decision : 16-03-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25F, 33C, 33C(2), 36A
Industrial Employment (Standing Orders) Act, 1946 — Section 10A, 10A(2)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 5

Citation : (2009) 4 BomCR 317 : (2009) 111 BOMLR 1153 : (2009) 122 FLR 554 : (2009) 3 LLJ 749 : (2009) 4 MhLj 289

Hon'ble Judges : Ranjana Desai, J;K.K. Tated, J

Bench : Division Bench

Advocate : P.K. Rele, instructed by Shailesh Pathak and T.R. Yadav, for the Appellant; Arshad Shaikh, instructed by Sanjay Udeshi and Co., for the Respondent

Final Decision : Dismissed

Judgement

Ranjana Desai, J.—The appellant is a Pharmaceutical Company, registered under the Indian Companies Act, 1913. The respondent is the Union which represents the workers of the appellant. In this appeal the appellant has challenged judgment and order dated 2/4/08 delivered by learned Single Judge of this Court in Writ Petition No. 191 of 2008.

2. Admittedly the respondent had entered into two settlements with the appellant. They are dated 25/9/87 and 14/7/90. Following clause was there in both these settlements.

Ganesh Festivities Advance": That the company shall pay effective from the year 1990 and thereafter every year ten days before Ganesh Festival Ganesh festivities advance of Rs. 480/-.

AND

That the said amount shall not be recovered.

3. A fresh charter of demands was submitted by the respondent on 5/1/94. Since the demand could not be settled amicably, it was referred for adjudication vide Reference (Industrial Tribunal) No. 31 of 1997. One of the demands of the respondent was relating to Ganesh festival allowance. The Industrial Tribunal adjudicated the demand and passed the award on 29/1/99. While dealing with the respondent's demand relating to Ganesh festival allowance, the Industrial Tribunal observed as under:

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 the 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 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 Mumble, 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 Festive allowance. It will not be proper to grant the said amount as allowance but that much 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.

The Industrial Tribunal, however, did not make it clear whether the amount to be paid to the workmen was to be recovered from them or not.

4. Pursuant to this award the appellant issued staff notice dated 13/8/99 informing the workmen that the Ganesh festival advance of Rs. 800/- will be recovered in two monthly installments from the wages payable from the month of October, 1999 and November 1999. Similar staff notice was issued on 9/8/2000. Being aggrieved by these notices the respondent filed Complaint (ULP) No. 832 of 2000 in the Industrial Court u/s 28 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act" for short). The respondent inter alia prayed for a direction to the appellant

to implement award dated 29/11/99 read with settlement dated 14/7/90 to pay Ganesh Festival allowance of Rs. 800/- per workman for the year 2000 and to restrain the appellant from recovering the Ganesh Festival advances already paid. There was also a prayer for refund of recovered amount of Ganesh festival advance with interest thereon at 18% per annum. Thus the respondent accepted the award. It prayed for its implementation by paying Rs. 800/- per workman as Ganesh Festival allowance as the respondent obviously was of the view that that is the only way the award should be interpreted.

5. The Industrial Court by its judgment and order dated 3/8/07 partly allowed the complaint. It declared that by deciding and by recovering the Ganesh Festivity amount paid to the workmen in two equal installments from the salary of the employees as per staff notices dated 30/8/99 and 9/8/2000 in breach of settlement and award, the respondent has engaged in unfair labour practices under Item 9 of Schedule IV of the MRTU & PULP Act, 1971. The respondent was directed to desist from 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 the order, in default, to pay 9% simple interest on the same from the date of the order.

6. Being aggrieved by the said judgment and order the appellant preferred Writ Petition No. 919 of 2008. By the impugned order learned Single Judge dismissed the said petition. Hence this appeal by the appellant.

7. We have heard learned Counsel for the parties. We have also gone through the written submissions submitted by them.

8. Mr. Rele, learned Counsel for the appellant submitted that the Industrial Tribunal while adjudicating the demand for Ganesh Festival did not grant it by way of an allowance but granted it only as an advance. Therefore, the earlier settlement was replaced by an award. Earlier settlement was not part of the present award. There is, therefore, no question of relying on any part of the earlier settlement while implementing the award Mr. Rele further submitted that the scope of Item 9 of the MRTU & PULP Act is to see whether the award is implemented or not. The Industrial Tribunal has fully interpreted the award. It has observed that the award is silent as to whether the Ganesh Festival advance is recoverable or not and, therefore, it was beyond the scope of the Industrial Tribunal to add to the award while interpreting it.

9. Mr. Rele submitted that the respondent did not challenge the award. He submitted that the Industrial Court and learned Single Judge have while interpreting the award re-adjudicated the matter and substituted the same with what they considered ought to have been done. It was not open to them to rewrite or recast the award.

10. Mr. Rele pointed out that issue of Ganesh Festival advance is fully covered by the award and, therefore, observation made therein that "there will not be any

adverse effect on the other terms and conditions, which are not covered under the present reference, which the workmen concerned are presently getting" will have no application. The respondent cannot take advantage of the said observation.

11. Mr. Rele submitted that in this case there is no non-implementation of the award. The appellant has bonafide interpreted the award and implemented it. There is, therefore, no question of the appellants committing any unfair labour practice. In this connection Mr. Rele relied on *Balmer Lawrie & Co. Ltd. v. S. M. Limaye and Anr.* 1992 Lab. I. C. 205. Mr. Rele further submitted that until a new contract or award replaces the previous one, the former settlement or award will regulate the relations between the parties. He submitted that, therefore, till such time as award dated 29/1/99 is replaced by a new award, it will continue to regulate the relations between the appellant and the respondent. Award dated 29/1/99 is unambiguous. It states that Ganesh Festival allowance is an advance and not an allowance. Till a new award replaces this award, the parties will have to abide by its unambiguous terms. In this connection Mr. Rele relied on *LIC of India v. D.J. Bahadur* 1980 Lab. I.C. 1218 (SC).

12. Mr. Rele submitted u/s 36-A of the Industrial Disputes Act, 1947, there is a provision for interpretation of the awards passed thereunder. Award passed under the Industrial Disputes Act, 1947 cannot be interpreted under the MRTU & PULP Act. Mr. Rele submitted that learned Single Judge erred in endorsing the view taken by the Industrial Court and, therefore, the impugned judgments deserve to be set aside.

13. Mr. Shaikh, learned Counsel for the respondent on the other hand submitted that the Industrial Court deciding a complaint of unfair labour practices is not merely an executing court but it decides disputes relating to unfair labour practices substantively. He submitted that Item 9 of Schedule IV i.e. unfair labour practices of failure to implement award, settlement or agreement includes deciding whether there is breach of statutory provisions. The Industrial Court can interpret an agreement to decide whether there is a violation of the agreement.

14. Mr. Shaikh submitted that it is well settled that an executing court can interpret an award. In this connection he relied on *Voltas Ltd. Vs. J.M. Demello and Another*, , *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, , *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, and *Manager, Rohtas Industries Ltd. Vs. Judge, Labour Court and Others*,

15. Mr. Shaikh submitted that the provisions of MRTU & PULP Act overlap the provisions of the Industrial Disputes Act and it is for a person to choose between the two. In support of this submission he relied on *Executive Engineer Electrical Division v. Prakash Devidas Kalerif* 1986 LAB IC 738 & *Mafatlal Engineering Industries Ltd. v. Mafatlal Engineering Industries Employees, Union and Ors.* 1991 I CLR 851 H. (Bom.). Relying on *Vijayakumar Laxman Kabir v. NRC Ltd. and Ors.* 2003 III CLR 94. Mr. Shaikh submitted that powers of the Industrial

Court under MRTU & PULP Act are much wider.

16. Mr. Shaikh further submitted that the Industrial Court has neither superseded the award nor readjudicated the matter or recast the award. Mr. Shaikh submitted that in exercise of his powers under Article 227 of the Constitution of India, learned Single Judge could not have reviewed or reweighed the evidence. Impugned order indicates that learned Single Judge was conscious of the limitations of exercise of power under Article 226 of the Constitution of India. The appellants cannot expect learned Single Judge to exceed the limits of his jurisdiction. On the scope of learned Single Judge's jurisdiction Mr. Shaikh relied on Mohd. Yunus Vs. Mohd. Mustaqim and Others, , Ranjeet Singh Vs. Ravi Prakash, , ONGC Ltd. v. Sendhabhai Vastram Patel and Ors. 2005 (6) SCC 454.

17. Mr. Shaikh submitted that learned Single Judge by the impugned order has rightly come to the conclusion that there was no error committed by the Industrial Court. He has independently ascertained the purport of the award. His interpretation of the various clauses of the award is unassailable and, therefore, the appeal deserves to be dismissed.

18. That the award can be interpreted can hardly be disputed. The Constitution Bench has in Central Bank of India's case (supra) while dealing with the scope of Section 33-C(2) of the Industrial Disputes Act held that for the purpose of making the necessary determination u/s 33-C(2) in appropriate cases it is open to the labour court to interpret the award or settlement on which the workers' rights rest. Similar view has been taken by the Supreme Court in East India Coal Co.'s case (supra). In Voltas Ltd.'s case (supra) the Supreme Court held that, if the award is unambiguous the Labour Court is bound to enforce it and in the guise of interpreting it, it cannot make a new award by adding or subtracting therefrom. The Supreme Court further observed that although the Labour Court 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 of the Industrial Disputes Act. Though the Supreme Court was referring to the provisions of the Industrial Disputes Act, the principles would also apply to the cases where the Industrial Court is called upon to decide whether there is a failure to implement an award making out a case of unfair labour practice within the meaning of Item 9 of Schedule IV of the MRTU & PULP Act.

19. The moot question is whether the amount of Rs. 840/- to be paid to workmen as per award dated 29/1/99 for Ganesh Festival is recoverable by the appellant or not. The Industrial Tribunal has not clearly stated whether it is recoverable or not. The respondent has not challenged the said award because according to the respondent a reading of the award and the attendant circumstances make it clear that amount of Rs. 840/- is a non-recoverable amount. According to the appellant it is a recoverable amount. The need to interpret the award arose because of the above controversy.

20. It was argued by Mr. Rele that Section 36A of the Industrial Disputes Act empowers the Labour Court, Tribunal or National Tribunal to interpret or award or settlement in case of difficulties and, therefore, the respondents ought to have taken resort to Section 36A. It could not have called upon the Industrial Court under the MRTU & PULP Act to interpret the award passed under the Industrial Disputes Act.

21. We find no hesitation in rejecting this submission. In this connection, we may usefully refer to the judgment of the Division Bench of this Court in Executive Engineer's case (supra). In that case this Court was considering the question whether the retrenchment of an employee without following the procedure as prescribed u/s 25-F of the Industrial Disputes Act amounts to unfair labour practice within the meaning of clause (f) of item I of Schedule IV of the MRTU & PULP Act. It was urged on behalf of the employer that clause (f) of Item 1 of Schedule IV of the MRTU & PULP Act cannot be interpreted to include disputes relating to retrenchment which are exclusively covered by Chapter V-A of the Industrial Disputes Act. According to the employer the breach of Section 25F of the Industrial Disputes Act would be an industrial dispute to be adjudicated by the Labour Court under reference made by appropriate Government. This Court rejected this submission by observing that the jurisdictions under both the Acts do overlap but the choice is left with the employee to select either of the remedies. This Court further observed that the remedies provided under the MRTU & PULP Act are much wider as the courts are empowered even to prevent the indulgence by an employer into unfair labour practice by granting temporary reliefs and it is open for the workmen to resort to speedier remedy, if such remedy is available to them.

22. We may also refer to the judgment of learned Single Judge of this Court (Chandrachud, J.) in Vijayakumar Kabir's case (supra). In that case the petitioner therein was charged with theft, fraud etc. A disciplinary inquiry was ordered. The petitioner was informed that his subsistence allowance will not be paid. The petitioner, therefore, filed a complaint in the Industrial Court under Items 9 & 10 of Schedule IV of the MRTU & PULP Act. The Industrial Court dismissed the complaint. That order was challenged before learned Single Judge. On behalf of the employer it was urged that the Industrial Court had no jurisdiction to deal with the complaint instituted by the petitioner since the only remedy which was available to him was under subsection (2) of Section 10-A of the Industrial Employment (Standing Orders) Act, 1946 ("the said Act" for short). Section 10-A of the said Act pertains to payment of subsistence allowance payable to a workman. Under subsection (2) thereof, if any dispute arises regarding the subsistence allowance payable to a workman, the workman or the employer concerned may refer the dispute to the Labour Court constituted under the Industrial Disputes Act and the decision of the Labour Court shall be final. It was, therefore, urged that the Industrial Court had no jurisdiction to deal with the complaint filed under the MRTU & PULP Act. While dealing with this submission this Court observed that u/s 5(d) of the MRTU & PULP Act, the

Industrial Court has been vested with the jurisdiction to decide complaints relating to unfair labour practices except unfair labour practices falling under Item 1 of Schedule IV. Unfair Labour Practice under Item 9 of Schedule IV is a failure to implement an award, settlement or argument. This Court held that the provisions of Section 10-A which mandate that a particular rate of subsistence allowance be allowed to a workman during the pendency of a disciplinary inquiry must be regarded as constituting a part of the statutory terms and conditions of the service of the workman and a breach of Section 10-A must be held to implicate a breach of Item 9 of Schedule IV of the MRTU & PULP Act. This Court referred to Section 30(1)(b) of the MRTU & PULP Act and observed that powers of the Industrial Court under the said Section are much wider in their scope and canvass. This Court further observed that there is no principle of statutory interpretation to presuppose that the provisions of Subsection (2) of Section 10-A exclude the applicability of the provisions of MRTU & PULP Act as there is neither an express exclusion or an exclusion by intent. We are in respectful agreement with this view. We, therefore, reject Mr. Rele's submission that an award passed under the Industrial Disputes Act cannot be interpreted under the MRTU & PULP Act.

23. Mr. Rele, learned Counsel for the appellant submitted that the appellant has interpreted the award in its true spirit and, therefore, the appellant cannot be held guilty of unfair labour practice covered by Item 9 of Schedule IV of MRTU & PULP Act. Relying on the judgment of this Court in Balmer Lawrie's case (supra). Mr. Rele submitted that where a party bonafide puts forward his interpretation of the settlement and is willing to abide by any interpretation of a competent court it cannot be said that such a party has failed to implement the settlement within the meaning of Item 9 of Schedule IV. Mr. Rele submitted that the award has attained finality. According to him the Industrial Court and learned Single Judge have fallen into the error of recasting it.

24. Undoubtedly if the appellant has bonafide interpreted the award then in the light of Balmer Lawrie's case (supra) it must be held that there is no failure to implement the award. It is, therefore, necessary to see whether the appellant's interpretation of the award is bonafide. It is also necessary to see whether the Industrial Court has recast the award or readjudicated the matter and substituted the same with its own order and whether learned Single Judge has also done the same thing.

25. Admittedly earlier settlements gave the workmen Ganesh Festival advance of Rs. 480/- and it was made clear in the settlements that it shall not be recovered from them. The respondent raised a demand relating to Ganesh Festival allowance. The respondent wanted the amount of Rs. 480/- to be increased considering the price rise. In paragraph 107 of the award which we have quoted hereinabove, while dealing with this demand the Industrial Tribunal noted the submission of learned Counsel for the appellant that the grant of the respondent's demand can place extra-financial burden on the appellant.

Therefore, the appellant understood this demand as demand for an enhanced non-recoverable amount to be paid to the members of the respondent for the Ganesh Festival. It is also pertinent to note that in paragraph 175 of the award, the Industrial Tribunal made it 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 concerned are presently getting". On the date of the award the members of the respondent were getting advance of Rs. 480/- which was not to be recovered. Demand raised was for the enhancement of Rs. 480/-. This non-recoverable advance of Rs. 480/- was not in issue. It is not recorded in the award that the appellant raised a contention that the said non-recoverable advance should be made recoverable by permitting the appellant to deduct it from the salaries of the workmen. The non-recoverable amount of Rs. 480/- was the existing benefit which the workmen were getting at the time of the award. It was a term covered by the earlier settlement. Therefore, as per the clarification of the Industrial Tribunal which, we have quoted hereinabove the award cannot be interpreted in a manner so as to have adverse effect on the said non-recoverable amount of Rs. 480/- paid to the workers. If the interpretation sought to be put by the appellant is accepted the appellant would be entitled to recover even the sum of Rs. 480/- which the workmen concerned were getting on the date of the award. It is necessary to note at the cost of repetition that it was not even the case of the appellant that the said amount should be made recoverable. It is also important to note that the Industrial Tribunal has noted that the appellant was paying Rs. 480/- as Ganesh Festival advance as per the last settlement of 1990 and it would be just and proper to enhance the said amount to some extent considering the overall price rise of all necessities of livelihood. It is true that the Industrial Tribunal has added that the amount of Rs. 840/- was to be paid as advance and not by way of allowance. However, it is nowhere stated that the said advance was recoverable. Considering the tenor of the award and the attendant circumstances the Industrial Court has held that the said amount is nonrefundable. Learned Single Judge has also come to the same conclusion. Taking an overall view of the matter, we are of the opinion that the Industrial Court and learned Single Judge have merely interpreted the award. They have not substituted it with what they considered ought to have been done by the Industrial Tribunal. We endorse the said interpretation. We are also of the opinion that in order to avoid its obligation under the previous settlements which is confirmed under the award the appellant is trying to misinterpret the award. By placing such interpretation on the award, the appellant is trying to make even the amount of Rs. 480/- which was paid to the workmen as non-recoverable amount, recoverable. It is not at all a bonafide interpretation as described by this Court in Balmer Lawrie's case (supra). Such interpretation would result in failure to implement the award amounting to unfair labour practice falling within the ambit of Item 9 of Schedule IV of the MRTU & PULP Act. In our opinion, the appellant cannot draw any support from the judgment in Balmer Lawrie's case. 26. Relying on the Supreme Court's judgment in LIC of India's case, Mr. Rele also submitted that the earlier settlements are replaced by the award of the

Industrial Tribunal and, therefore, this Court cannot direct the appellant to implement the earlier settlements while implementing the award. He submitted that till new award replaces the present award the parties will have to abide by the unambiguous terms of the present award. This argument confirms our view that the appellant is trying to get rid of even the obligation to pay non-recoverable amount of Rs. 480/- which was to be paid for Ganesh Festival under the earlier settlements and about which the appellant had not raised any objection. In fact need to interpret the award has arisen because of this approach of the appellant. Besides the award in question cannot be described as an unambiguous award. There is no clear statement in the award as to whether Rs. 800/- was to be recovered from the workmen or not. We have already referred to the relevant terms of the earlier settlements and observations made in the award. While interpreting the award necessarily earlier settlements will have to be taken into account to understand the benefits which the workmen were getting on the date of the award. The award will have to be interpreted keeping the earlier settlements in mind so as to avoid any adverse effect on the existing benefits of the workmen. This does not mean that the respondents are seeking implementation of the earlier settlements. The anxiety of any Court would be to ensure that the award is implemented by interpreting it correctly. In our opinion, the judgment of the Supreme Court in LIC of India's case (supra) will have no application to the present case.

27. It must also be noted that while exercising jurisdiction under Article 226 of the Constitution of India, learned Single Judge was not acting like an appellate court. There was no self evident error in exercise of jurisdiction by the Industrial Court warranting interference by learned Single Judge. If it was reasonably possible to form two opinions on the same material, the finding arrived at one way or the other could not have been interfered with in writ jurisdiction. Tested in the light of settled principles underlying exercise of writ jurisdiction laid down by the Supreme Court in the judgments to which, we have made reference hereinabove, we find no illegality in the impugned judgment and order.

28. In view of the above, the appeal is dismissed.