

(1998) 12 DEL CK 0007
In the Delhi High Court
Case No : C.W. No. 2557 of 1989

Birla Textile Technical Employees" Union (Regd.) and Others	APPELLANT
Vs	
Taxmaco Ltd. and Others	RESPONDENT

Date of Decision : 01-12-1998

Acts Referred:

Citation : (1999) 48 DRJ 181 : (1999) 81 FLR 891

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Mr. D.N. Vohra, for the Appellant; Mr. Rajinder Dhawan, for the Respondent

Judgement

Vijender Jain, J.—This writ petition has been filed by Birla Textile Technical Employees Union (Regd.) aggrieved by the order of respondent No. 2 to make a reference Mr. Vohra, learned Counsel for the petitioner has contended that pursuant to a settlement arrived at u/s 12(3) read with Section 18(3) of the industrial Disputes Act, 1947, the management has agreed to pay Rs. 70/- per month as interim relief from 1st January, 1986 to all existing workers. Mr. Vohra has contended that although the petitioner Union was not a party to the settlement, however in view of Section 18(3) of the Industrial Disputes Act even though petitioner was not party to the settlement, the petitioner shall still be entitled to the benefit of settlement arrived at during the currency of the conciliation proceedings before the settlement officer. Mr. Vohra has further contended that when there is a binding settlement, which has not been terminated in accordance with the procedure laid down u/s 19 of the Industrial Dispute Act no dispute can be raised with regard to be said interim relief which forms subject matter of settlement. Mr. Vohra has assailed the order of reference as the same is incompetent in law. In support of his submission, learned Counsel for the petitioner has cited Ramnagar Cane & Sugar Co. Vs. Jatin Chakravorty 1961 (1) LLJ 244. The relevant para is as under :

"In other words, there can be no doubt that the settlement arrived at between

the appellant and the Employees" Union during the course of conciliation proceedings on 25th February, 1954, would bind not only the members of the said union but all workmen employed in the establishment of the appellant at that date. That inevitably means that the respondents would be bound by the said settlement even though they may belong to the rival union."

2. To buttress his argument further Mr. Vohra has also cited *Erumeli Estate Vs. Industrial Tribunal and Others* 1962 2 LLJ 144 and *Natarajan Vs. Regional Assistant Commissioner of Labour and Others* 1966 1 LLJ 310.

3. Mr. Vohra has further contended that in view of the law laid down by the Supreme Court in *P. Virudhachalam and Others. Vs. The Management of Lotus Mills and Others*, 1998 (78) Indian Factories & Labour Reports 107, the settlement arrived at between the management and the other unions were binding on all the workmen in view of Section 83 of the Act. He has further stated that in view of the law laid down in *P. Virudhachalam (supra)*, the settlement would bind all workmen even if individually they may not have signed the agreement with the management or their union might not have signed such agreement on behalf of its member workmen and has quoted the following from the aforesaid judgment:

"The aforesaid relevant provisions of the Act, Therefore, leave no room for doubt that once a written settlement is arrived at during the conciliation proceedings such settlement u/s 12(3) has a binding effect not only on the signatories to the settlement but also on all parties to the industrial dispute which would cover the entire body of workmen, not only existing workmen but also future workmen."

4. Mr. Vohra has further contended that even if the petitioners were technical staff of the respondent they are covered u/s 2(s) by virtue of the definition of workmen, u/s 2(s) of the Industrial Disputes Act as workmen and, Therefore, are entitled to the benefit under the settlement.

5. On the other hand, Mr. Rajinder, Dhawan, learned Counsel for the respondent has contended that settlement was arrived at between the various unions of the workers who were operators. He has contended that there was a strike in five textile mills including Birla Textile Mills in Delhi in the year 1986. A Sangharsh Committee was formed comprising of Rashtraya Textile Mazdoor Congress (INTUC), Rashtraya Mazdoor Congress, Kapra Mazdoor Lal Jhanda Union (CITU), Textile Mazdoor Janta Union (HMS), Kapra Mazdoor Ekta Union (AITU) which represented workers/operators. Mr. Dhawan has contended that the petitioner-Union was neither a member of the Sangharsh Committee nor submitted any charter of demand and so much so that they even did not participate in the strike which was launched by the Sangharsh Committee comprising of five aforesaid unions. Mr. Dhawan has contended that the settlement which was arrived at between the aforesaid unions is binding on the class of employees who have espoused their disputes and with whom the management has arrived at such a settlement. The petitioner being a distinct and separate class of employees,

would not be covered under the settlement and in support of his contention cited Indian Oxygen Ltd. Vs. Industrial Tribunal and Others 1978 1 LLJ 302 a Single Bench decision of this Court.

6. I have given my careful consideration to the arguments advanced by learned Counsel for both the parties. It is an admitted case of the parties that a settlement was arrived at through the active participation of the conciliation officer. There cannot be any dispute to the proposition of law as canvassed before me by Mr. Vohra that the settlement was arrived at during the currency of conciliation proceedings before the conciliation officer. There cannot be two opinions that if such settlement is arrived at, the same is binding not only to the workers or unions who have signed the same, the same is binding even to those workmen who were not a party to the settlement. This kind of settlement will also be binding on not only the existing workmen but the future workmen as per the law laid down in P. Virudhachalam's case (supra).

7. Even otherwise, that is on the basis of the plain language Section 18(3) of the Industrial Disputes Act, which reads as under :

18.(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 3(a) of Section 10A 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 assignees 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 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.

8. For harmonious construction of Section 18(3)(d), where the binding effect of such settlement is 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 employee in that establishment or part, important aspect is the dispute whether the petitioner in any way was related to the dispute.

9. In this case it is not the case of the petitioner that they were part of the

Sangrash Committee of workers who went on strike. The petitioner did not participate in the strike may be on account of the fact that they were governed by their own service conditions. I find force in the argument of the respondent that the settlement which was arrived at was not for class of employees represented by the petitioner. In paragraph 6 of the counter affidavit it has been stated by the respondent that the technical staff was getting annual increment which the workers who went on strike did not get. The members of the petitioner union got 30 days" annual leave as against 15 days" leave which was given to workers. Members of the petitioner union got 15 days" sick leave whereas the workers did not get any such leave. All these issues make the petitioner as a different and distinct class of employees other than those workers who have raised the dispute. Therefore, the word occurring in clause (d) of sub-section (3) of Section 18"to which dispute relates on the date of dispute...." assumes significance.

10. The petitioners were neither related to the dispute nor participated or espoused the dispute. Still if they were performing the same kind of job or belong to the same class of workers they would have been benefited under the terms of settlement. As I have stated above, the petitioner were a distinct and different class having a separate service conditions. Therefore, they were not party to the dispute altogether. This will be borne out from the fact that in the counter affidavit respondent had given the list of 10 persons taken from the list of employees given by the petitioner who were admittedly not the workers:

- (1) R.K. Aggarwal, Finance Manager
- (2) G.D. Bianani, Marketing Manager
- (3) R.L. Goel, Chief Labour Officer
- (4) P.S. Shekhent, General Manager (Tech.)
- (5) L.K. Jain, Programme Manager
- (6) D.N. Kohli, Law Officer
- (7) Radhe Shyam Kedia, Officer on Spl. Duty
- (8) J.P. Sarda, Sales Manager
- (9) K.C. Purohit, S.O.C. In-Charge
- (10) V.P. Mangal, Processing Manager.

11. By on stretch of imagination, it could be said that these officers would constitute the same class as the workers with whom settlement has been arrived at. In the rejoinder affidavit, however, the petitioner in paragraph 4 has replied to the averment in the counter affidavit in the following terms:

"Names of Shri R.K. Aggarwal and others were deleted and Annexure C is not a correct copy, para 8 is not, Therefore, admitted as correct."

12. The stand of respondents 2 and 4, i.e., State Government is reflected in paragraph 3 of the counter affidavit filed by respondents 2 and 4, which is to the following effect :

"The contents of para 1 of the writ petition are not correct. It is submitted that the settlement dated 16.8.1986 covered only those categories of employees who were being represented by the unions, who were signatories to the settlement. It is submitted that Ekta Union, Kapra Mazdoor, Lal Jhanda Union, Kapra Mill Mazdoor Sangh, Textile Mazdoor, Janta Union, Textile Mills Congress and Rashtrya Mazdoor Textile Congress who signed the settlement only represented the Operative Staff working in Birla Mills. The Operative Staff of the 4 Textile Mills including Birla Textile Mills has gone on strike. The technical staff of Birla Mills whom the petitioner union represents did not go on strike. Even in the past some settlements were arrived at between the unions of the operative staff and benefits of such settlements were not given to technical staff. Technical staff is a separate category of staff having their terms of employment which are different/distinct from those of the operative staff. The technical staff, Therefore, was not covered by the settlement dated 16.8.1986. In view of the above, none of the questions mentioned in para of the writ petition really arise in the present proceedings."

13. There is yet another aspect of the controversy. Whether the petitioner themselves understood that the petitioner and the management were not bound under the settlement qua the petitioner? From the statement of claim before the conciliation officer filed by the petitioner themselves in para 6 of the said settlement of claim, the petitioner took the stand that the petitioner was the technical staff and were also workmen of the mill and performing the duties for the production like other workmen. They, inter alia, further stated in the said settlement of claim that in spite of various demands, the management has not paid the interim relief and, Therefore, requested the conciliation officer to advise the management to pay the interim relief failing which the case may be sent for adjudication. Having themselves invoked the jurisdiction of the conciliation officer and asking for reference of dispute for adjudication, the petitioner cannot now turn round and say that the reference is bad. Without deciding whether the petitioners were covered under the settlement straightway a direction cannot be given to the management for complying with the terms of the settlement.

14. In view of the discussion above, I hold that the reference by the State Government at the behest of petitioner themselves cannot be said to be invalid or illegal. I would not like to dwell much on the controversy as to whether the petitioners were covered under the settlement or not as anything said in this order will affect the case of either party. Respondent No. 3 is directed to adjudicate upon the reference within a period of three months not affected by any observation made by this Court about the status of the petitioner vis-a-vis the settlement.

The petition is disposed of with these directions.