
(2008) 02 BOM CK 0027

In the Bombay High Court

Case No : Writ Petition No. 4652 of 1996 and Civil Application No. 7098 of 1996

Bombay Gas Company Ltd.

APPELLANT

Vs

G.S. Baj and Others

RESPONDENT

Date of Decision : 11-02-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(2), 18(1), 2, 25FFA, 25M

Citation : (2008) 118 FLR 530 : (2008) 3 LLJ 365 : (2008) 4 MhLj 88

Hon'ble Judges : B.H. Marlapalle, J

Bench : Single Bench

Advocate : J.P. Cama and Mahesh Londhe, instructed by Sanjay Udeshi and Co, for the Appellant;

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—This petition impugns the award dated 9-12-1994 passed by the Industrial Tribunal at Mumbai thereby allowing Reference (IT) No. 77 of 1974.

2. The facts leading to this petition and briefly stated are as under:

The Deputy Commissioner of Labour, Mumbai vide his order dated 14-3-1974 had referred the following two demands for adjudication u/s 10(2) of the Industrial Disputes Act, 1947 to the Industrial Tribunal and between the petitioner-company and its workmen at the Gas Factory, Lalbaug, Mumbai:

(a) All the workmen employed in the Bombay Gas Company Ltd. at Gas Works and District Departments, Bombay, shall be paid basic wages and dearness allowance for all the days in a month effective from 1-3-1974, and

(b) All the workmen employed in the Bombay Gas Company Ltd. at Gas Works and District Departments, Bombay, shall be paid in addition to the basic wages and dearness allowance for all the days in a month 6 1/2 per cent of the basic wages upto Rs. 200/- and 5 per cent over the balance after Rs. 200/-.

The Reference came to be registered as Reference (IT) No. 77 of 1974 and on

11-10-1974 the Tribunal was pleased to pass an award. The said award came to be challenged before this Court in Writ Petition No. 1182 of 1974 and initially by order dated 13-12-1974, the petition was admitted and stay to the award was granted. The said petition was finally dismissed by this Court on 12-3-1984 and consequently the Company filed Appeal No. 472 of 1984 and a Division Bench of this Court was pleased to stay the operation of the award subject to the Company depositing an amount of Rs. 60 lacs, as per the order dated 31-8-1984. The petitioner-company approached the Supreme Court in SLP No. 1565 of 1985 and the Apex Court was pleased to modify the said order and directed the Company to furnish a bank guarantee for Rs. 60 lacs within two months and pay interest at 12% P.A. if the company would lose the case finally.

3. In the meanwhile, from 29-7-1981 the workmen at the factory and head office resorted to a lightning strike. The same strike was declared as illegal by the Labour Court and the State Government issued a Notification on 1-4-1982 and prohibited the continuation of the strike. However, the illegal strike continued till the later part of 1982. The Company submitted a notice of lockout to the Government of Maharashtra in terms of Section 25FFA of the Industrial Disputes Act, 1947 (the Act for short) and intended to effect the lockout from 26-12-1983. On the same day the Company submitted an application to the Government of Maharashtra seeking permission to close down its undertaking at Lalbaug with effect from 26-12-1983 u/s 25O of the Act. The Government of Maharashtra, in turn, vide its order dated 23-11-1983 granted permission to close down the undertaking at Lalbaug and allied activities of the Head Office with effect from 26-12-1983. The said order came to be challenged in Appeal (IT) No. 6 of 1983 and the Appellate Industrial Tribunal was pleased to set aside the said order on 6-4-1984. The Company filed Writ Petition No. 1215 of 1984 challenging the order passed by the Appellate Industrial Tribunal. It also filed Writ Petition No. 294 of 1984 against the Union of India and the workmen and others, inter alia, challenging the vires of Section 25M of the Act and for other reliefs.

4. The workmen comprising Meter Readers and Assistant Meter Readers by their letter dated 18-5-1985 informed the Company that they had authorised 5 of their representatives at a meeting held for the purpose to initiate discussions and negotiations on all outstanding disputes/issues and disputes regarding payment of wages for the month of July, 1981, Bonus, wages for the intervening period from the date of the strike till the date of re-employment, claims under the Patankar Award and resumption of operations, etc. and forwarded therewith a copy of the said resolution to the Company. The Company having been satisfied that the five representatives were duly authorised to initiate discussions, opened negotiations and held meetings with the said representatives from time to time on all the outstanding issues/disputes and finally a settlement u/s 2(p) of the Act was signed between the Company and the authorised representatives on 23-5-1985. Another settlement was signed on 11-6-1985. Writ Petition No. 1215 of 1984 came to be allowed by this Court on 21-1-1986 and the order passed by the Tribunal was set aside. The matter was remanded for fresh hearing on merits

and on remand the Appellate Tribunal once again allowed the appeal and set aside the order of the State Government by its judgment and order dated 13-3-1987. The said order was challenged in Writ Petition No. 2067 of 1987 by the Company. Notice of Motion No. 1747 of 1987 was taken out in Writ Petition No. 2067 of 1987. The General Secretary of the Bombay Gas Company Staff Association filed Chamber Summons No. 603 of 1987 in Appeal No. 472 of 1984 and prayed that 492 workers who had accepted the settlement dated 11-6-1985 should be made party to the appeal. On 4-12-1987 Notice of Motion No. 1747 of 1987 was made absolute on the condition that the Company would be restrained from disposing off/parting with the possession or creating any third party in respect of its land, building and immovable property. Appeal No. 472 of 1984 was allowed by the order dated 27-10-1988 by the Division Bench of this Court and the Judgment of the Single Judge dated 12-3-1984 was set aside and Reference (IT) No. 77 of 1984 was remanded back to the Industrial Tribunal to hear the same afresh and dispose off expeditiously and preferably by 28-2-1989.

5. Issues were framed by the Industrial Tribunal on 13-9-1989 and an additional issue on 16-4-1990. Evidence was recorded. The Company by an application, brought on record three settlements signed between the Company and the representatives of the workmen, namely, settlements dated 29-4-1985, 23-5-1985 and 11-6-1985 and contended that all these three settlements covered about 90% of the demands pending for adjudication before the Tribunal. The Company further stated that out of the total of 1240 workmen, 1004 workmen had accepted the said settlements dated 23-5-1985 and 11-6-1985, by signing declaration form appended to the said settlements and received the benefits. The Company, therefore, prayed for the award to be passed by the Industrial Tribunal in terms of the said settlements. Out of the 12 issues framed by the Tribunal, 3 of the following issues pertain to the said settlements and all these three issues were answered against the petitioner - company:

3. Whether the settlements dated 23-5-1985 and 11-5-1985 are fair, valid and legal settlements and they would also be binding on the other workmen, who have not accepted the same?

4. Whether the present Reference survives, despite the two said settlements dt. 23-5-1985 and 11-6-1985?

11. Whether, having regard to the fact that overwhelming number of workmen have accepted the settlements dated 23-5-1985 and 11-6-1985, the Reference should be disposed off by making an Award in terms of the said settlements?

As noted hereinabove, the Industrial Tribunal passed the impugned award and allowed the Reference.

6. The crux of the arguments advanced by Mr. Cama the learned Senior Counsel in support of this petition is on the above stated three issues framed by the Industrial Tribunal and answered against the Company. It was submitted by Mr. Cama that when an overwhelming majority of the workmen (1004 out of 1240)

had accepted the settlements by signing an undertaking and it was very clearly stated in the said settlements that all the demands which were subject matter of the pending Reference would stand settled, it was imperative on the part of the Industrial Tribunal, by taking into consideration the well settled legal position, to pass the award in terms of the said settlements. In support of these contentions Mr. Cama has mainly relied upon the following decisions of the Supreme Court:

(a) Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others, , (b) Tata Engineering and Locomotive Company Limited Vs. Their Workmen, , (c) Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Ltd., , (d) K.C.P. Limited Vs. Presiding Officer and Others, . Mr. Cama also relied upon the decision of this Court (SB) in the case of Airlines Cabin Crew Association Vs. Indian Airlines Corporation and others, .

7. The Industrial Tribunal declined to pass the award in terms of the settlements dated 23-5-1985 and 11-6-1985 mainly for the following reasons:

(a) The said settlements cannot be said to be binding on other workmen who have not accepted the contentions that the present reference does not survive because of the settlements.

(b) The settlements have taken place during the pendency of Appeal No. 472 of 1984 before the High Court and the said appeal was decided in October, 1988. No pursis was filed in the appeal before the High Court pointing out that the dispute in the reference has been settled in full and final in view of the terms of the settlements. It means that the settlements were not acted upon and the parties did not desire to withdraw the claim pending in the Court of Law. No reason was assigned as to why the Division Bench of the Bombay High Court where Appeal No. 472 of 1984 was pending was not moved for such an order.

(c) Even if the terms and conditions of the said settlements have been partly executed by giving some or the other payments to the workmen concerned, it cannot be said by any stretch of imagination that the said settlements have permanently placed a lid on the claim involved in the present reference. The said settlements have taken place during the pendency of the reference. All timely steps ought to have been taken by the parties to bring the said settlements to the notice of the High Court and, therefore, these settlements arrived at during the pendency of the judicial proceedings cannot create a bar once for all from considering such dispute judiciously.

(d) If really majority of the workmen concerned are still interested in the said settlements, and have lost their interest in the present reference, nobody has prohibited and prevented them from applying to the Court to that effect. Nothing of this kind has been done so far for the best reasons known to the parties to the said settlements. This is one of the strongest circumstances in favour of the Union indicating that the said settlements have not brought the present dispute to an end.

(e) The documents annexed to Dr. Rajan's affidavit Exh.C-46 showed that 15 persons committee was formed, while the minutes annexed to the application dated 27-7-1994 showed that 16 persons committee was formed. The settlements have been interpolated by removing the word "Staff Association" and substituting the same by the word "workmen".

(f) The award passed by Shri Patankar had become enforceable and executable before the purported settlement dated 11-6-1985.

(g) The High Court had directed the Company to furnish a bank guarantee of Rs. 60 lacs and the said order was not complied with.

(h) Benefits of the settlement in conciliation cannot be nullified by entering into a settlement u/s 2(p).

8. The above reproduced reasoning of the Industrial Tribunal is not only fallacious but, in fact, it is contrary to a well settled legal position. Appeal No. 472 of 1984 was disposed by a Division Bench of this Court on 27-10-1988 on the basis of the minutes of order. Thus it is clear that the order dated 27-10-1988 was a consent order. Award in terms of settlement can be passed by the Court dealing with the reference and the reference was remanded back to the Industrial Court by the said order of consent. As per Clause 4 of the said order, both the parties were at liberty to file any additional documents and would be entitled to raise all contentions. The Company could not have filed an application for an award in terms of the settlement in Appeal No. 472 of 1984 as such an application requires adjudication on certain issues, namely, whether a vast majority of the workmen had accepted the settlements, whether the settlements were signed and complied with the requirements under the Industrial Disputes Act, 1947 as well as the Industrial Disputes (Bombay) Rules, 1957 (?) and whether the demands or most of the demands under adjudication were covered by such settlements. The Tribunal ought to have considered these issues and instead it went on to consider all peripheral and irrelevant issues. The binding nature of the settlement cannot be decided only on the ground that some of the workmen opposed the settlement. So long as the opposing workmen are in a hopeless minority and if the settlements have been executed and accepted by a vast majority of the workmen, it is necessary for the Industrial Court to proceed to pass an award in terms of the settlements. The view taken by the Industrial Court that when the settlement is accepted by the vast majority of the workmen, they must approach the reference Court and say so, is manifestly erroneous. The Industrial Court was at liberty to examine the contention of the Company that 1004 workmen had accepted the settlements. The Industrial Court also lost sight of the fact that the workmen were represented by two different bodies, namely, the Staff Association and the representatives who were authorised to sign settlement dated 23-5-1985. The second settlement dated 11-6-1985 has been signed with the Staff Association and if the word "Staff Association" has been replaced by the word "workmen" that by itself cannot make the settlement illegal or void or non-existent. The reasoning given by the Industrial Tribunal in

rejecting the Company's prayer for passing an award in terms of the settlements is nothing short of surmises and conjectures. A settlement signed u/s 2(p) of the Act is required to be examined even in the pending reference when the employer who is party to the reference makes an application for passing an award in terms of the said settlement and it is wrong for the Industrial Court to hold that the benefits of the settlement in conciliation cannot be nullified by entering into such a bilateral settlement.

9. In the case of Airlines Cabin Crew Association (*supra*), out of 625 Cabin Crew, 239 had opposed the settlement, accepted by the remaining Cabin Crew. The said settlement was signed u/s 2(p) of the I.D. Act. The Association had contended that as 239 of their members had not accepted the settlement, the same was not binding. This Court referred to the judgment in the case of Herbertsons Ltd. (*supra*) and held that when a large majority of the Cabin Crew members had accepted the settlement, it was not possible to ignore it merely because a few Cabin Crew members had raised some objections. The settlement cannot be scanned in bits and pieces and hold some parts good and acceptable and others bad. The settlement has to be accepted or rejected as a whole and unless it is demonstrated to be unfair and unjust, the Court will be slow to reject it. In the case of Tata Engineering and Locomotive Co. Ltd. (*supra*), a three Judge Bench of the Apex Court while dealing with the binding nature of a settlement signed u/s 2(p) read with Section 18(1) of the Act stated as under:

...If the settlement had been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers (in this case 71 i.e. 11.18%) were not parties to it or refused to accept it, or because the Tribunal was of the opinion that the workers deserved marginally higher emoluments than they themselves thought they did. A settlement cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication.

In the case of K.P.C. Ltd. (*supra*), 29 workers were dismissed and a reference was made u/s 2(k) of the Act at the instance of the Union. During the pendency of the reference, the Union signed a settlement on 7-11-1992 on behalf of the 29 dismissed workmen. In terms of the said settlement 29 workmen were given an option, namely, to accept reinstatement without backwages or to accept a lump sum amount of Rs. 75,000/- in lieu of reinstatement with other monetary benefits. 17 workmen accepted the said settlement whereas remaining 12 did not accept it. The Company and the Union made an application in Reference No. 708 of 1992 and prayed for an award in terms of the settlement. The Labour Court had decided to proceed with the reference in respect of the workmen who had not accepted the settlement and the Company failed before the Single Bench as well as Division Bench of the High Court. The Supreme Court held that Section

2(p) of the Act defines settlement to mean a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in that behalf and the Conciliation Officer. The Supreme Court held that the Labour Court was wrong to hold that the settlement was not binding on the remaining 12 workmen. In para 24 of the said settlement the Supreme Court stated as under:

24. In connection with justness and fairness of the settlement it was observed that this has to be considered in the light of the conditions that were in force at the time of the reference. When, therefore, negotiations take place which have to be encouraged, particularly between labour and employer in the interest of industrial peace and well-being, there is always give and take. The settlement has to be taken as a package deal and when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so far as the award is concerned, it cannot be said that the settlement as a whole is unfair and unjust. It was further observed that it is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such as it completely outweighs all the other advantages gained the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole.

10. In the instant case some of the Clauses of the settlement are required to be reproduced:

5. That the benefit of this settlement shall accrue only to such workmen who sign a declaration as per the appended form marked as Annexure - II provided that atleast 70% of the workmen (meter readers and Asstt. Meter readers) as were on the permanent rolls of the Company on 29th July, 1981 sign such declaration.

12. That this settlement fully settles all the claims of the workmen and that they shall have no claim against the Company whatsoever either monetary or otherwise in future in relation to the past and intervening period.

13. That all the outstanding disputes and differences between the Company and the workmen are settled and that the parties will have no claim one against other except those, if any, arising out of this memorandum of settlement.

In the consent order passed by this Court in Appeal No. 472 of 1984 on 27-10-1988 Clause Nos. 6 and 7 are relevant to be noted and hence they are reproduced as under:

6. Individual workmen who have in execution of the impugned award withdrawn moneys deposited by the Company in the Payment of Wages Court/Labour Court will not be required at this stage to repay the said amounts. No further amount

will be withdrawn by any workman from out of the moneys deposited in the Payment of Wages Court/Labour Court.

7. Workmen continue to be bound by the undertaking given by them and hereby undertake that if ultimately no amount is payable to the workmen the amount already withdrawn will be refunded and/or adjusted. In the meantime, the Registrar will invest the balance amount deposited by the Company with him in fixed deposit with any Nationalised Bank for a period of 181 days.

While signing the above stated settlements, these clauses were kept in mind and in no way there is any prejudice caused to these conditions. The settlement has been accepted, as stated by the Company, by 1004 workmen out of the total of 1240 and the list of their names was annexed with the application submitted before the Tribunal praying for an award in terms of the said settlements. It is thus clear that barring a negligible minority of about 235 workmen a vast majority of 1004 workmen had accepted the benefits of the settlements and the signing of the undertaking as set out in Clause No. 5 is a mode of undertaking that the workman concerned had signed settlement and it further declared that the terms therein were binding on them. Undoubtedly the Industrial Tribunal fell in gross errors in answering Issue Nos. 3, 4 and 11 against the Company and the Industrial Tribunal, by keeping in mind the well settled legal position, ought to have answered the said issues in favour of the Company and thereby declared an award in terms of the settlements dated 23-5-1985 and 11-6-1985.

11. In the premises, this petition succeeds and the same is hereby allowed. The impugned award is quashed and set aside. Reference (IT) No. 77 of 1974 is hereby answered in terms of the settlements dated 23-5-1985 and 11-6-1985 and hence an award in terms of the said settlements. Civil Application No. 7098 of 1996 stands disposed off.