
(2002) 07 KL CK 0050
In the High Court Of Kerala
Case No : O.P. No. 20202 of 2002

Cochin Refineries Employees Association	APPELLANT
Vs	
Union of India (UOI)	RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 58
Industrial Disputes Act, 1947 — Section 12(2), 12(3), 18(1)

Citation : (2002) 07 KL CK 0050

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : George Poonthottam and C.S. Ajith Prakash, for the Appellant; C.P. Ravikumar, A.C.G.S.C., Antony Dominic, Asok M. Cherian and P. Ramakrishnan, for the Respondent

Judgement

Kurian Joseph, J.—Peace is a priced commodity. This is particularly so in an industrial establishment where peace is to be purchased; but at what price?

2. Petitioner, a registered trade union, represents the majority of workers in the 5th respondent establishment. The period of the 1996 memorandum of settlement expired in July 1998. It appears there were no serious efforts for a fresh settlement and on the unions issuing strike notice the 3rd respondent initiated conciliation proceedings. Petitioner and the 6th respondent are the two unions in the establishment. They initially moved with understanding in the matter of collective bargaining. But apparently at some stage the management got an edge over the "collectivity" and the management entered into a bipartite agreement with the 6th respondent alone. The story did not end there. 187 workers belonging to the petitioner union, still owing allegiance to the union, later came out to join the said bipartite settlement and as of now the management claims that 58.13% of the workmen have accepted the settlement. It is further submitted that being a just, fair and reasonable settlement it is only to be certified u/s 12(3) of the Industrial Disputes Act.

3. It is the case of the petitioner union that the 3rd respondent has not been able to effectively conciliate and settle the differences. In the last conciliation held on 8.7.2002, according to the petitioner, the management showed a very rigid and anti-labour attitude in order to defeat the morale and bargaining strength of the workers. The petitioner also submits that there were no sincere efforts on the part of the Conciliation Officer to persuade the management for a settlement; on the contrary the attempt appears to have been to close the discussions and as per Ext. P3 the same was closed. It would be profitable to extract the relevant portion of the Ext. P3 proceedings itself.

"On the advice of the Conciliation Officer, all the parties attended for discussion today ie., on 18.7.2002. The remaining 6 points (ie., (i) the workers who are working for 44 days should be allowed 26 days PL and who are working for 40 hours should be allowed 12 days PL; (ii) P & P allowance must be allowed; (in) regarding conveyance allowance, the workers who are using the bus facility can be charged though they are claiming conveyance allowance, (iv) upgradation, (v) clause on flexibility; and (vi) Uniform/Washing Allowance) which was left over during the last discussion held on 23.5.2002 were again discussed elaborately. On the said remaining 6 points, the management expressed their inability to consider the requests of the union as according to the management they have stretched to the maximum extent and they cannot consider any more demands whereas the representatives of Cochin Refineries Employees Association (CREA) were repeatedly demanding the settlement of the above 6 points also.

However, the representatives of the Cochin Refineries Workers Association (CRWA) submitted that they are ready to sign the proposed draft settlement.

It is pertinent to note that though a considerable time and effort has been put to solve the matter amicably by giving sufficient time to all the parties for discussion and large number of issues pertaining to the LTS has been discussed and settled leaving minor issues as stated above to be settled in today's discussions. During the today's discussion the management took a rigid stand not to consider the remaining 6 issues but agreed to discuss the issue of Uniform and Washing Allowance bilaterally after signing the LTS. The representatives of CREA did not agree to the above proposal of the management and insisted that all these issues to be discussed, settled and to be taken as part of the settlement. Due to the rigid stand of the parties and inspite of best suggestions/efforts, the CREA and the management did not agree to the suggestion of the conciliation officer and was reluctant to sign the settlement. Therefore, it is felt that there is no cause to prolong the discussions and the Conciliation Officer has no other alternative but to close the instant file. Therefore, the case is treated as closed in this office."

4. Dramatic developments followed Ext. P3 failure of conciliation. The conciliation was closed by 2 p.m. on 18.7.2002. By around 6 p.m. the management was able to reach an agreement with the 6th respondent union. True copy of the agreement is Ext. R5(a). According to the petitioner they were not called for a

bipartite discussion or settlement and agreement entered into between the management and one union is nothing but fraud and unfair labour practice. It is submitted that the management should have pursued the efforts at various levels as have been done on former occasions and should have purchased peace by fully settling the disputes with the unions including the petitioner. The petitioner also takes strong objection to the conduct of the 3rd respondent in having abruptly stopped the discussions paving way for bipartite agreement between the management and one union.

5. The developments did not end there. The management could succeed in getting two other bilateral agreements signed with a section of workmen belonging to the petitioner union. Ext. R5(c) and Ext. R5(e) agreements take in 187 workers. Therefore, it is submitted by the management that altogether 58.13% of the total workmen have fully accepted the terms and conditions of bilateral settlements and since there is agreement with the majority of workmen. The bilateral settlements have been forwarded to the 3rd respondent for certification as a conciliation settlement. It is further submitted that since the settlements are accepted by a substantial number of workmen and since the terms are fair and reasonable the 3rd respondent is to certify the same as a conciliation settlement and therefore, there is no rhyme or reason in continuing the conciliation proceedings any longer. It is further submitted that since the settlements arrived at with 58.13% of workmen is in full and final settlement of all the demands, the same cannot be reopened lest it would lead to industrial unrest.

6. The 3rd respondent has filed a counter affidavit. It is seen from the counter affidavit that because of the effective intervention of the Conciliation Officer, the unions agreed to postpone the strike and the discussion on long term settlement started on 12.12.2001. Details of several meetings are given at paragraph 3 of the affidavit. It is stated at paragraph 4 of the affidavit that due to the rigid stand of the petitioner union and the management on certain areas, there was no meaning in conducting any further discussion and hence only the same was closed. In spite of the fact that 32 rounds of bilateral discussions between the management and the Unions were held during the last 48 months, it is submitted that "..... there is no objection in holding fresh discussion in the matter after all the parties agreed upon and come with an open mind for an amicable settlement". However, according to the 3rd respondent the terms of bipartite settlement are fair and reasonable.

7. Settlement is defined at Section 2(p) of the Act. Section 12 provides for the duties of Conciliation Officer and the procedure and Section 18 deals with parties to settlement. Those relevant provisions are extracted below:-

"2(p). "settlement" means 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 this behalf by the appropriate Government and the Conciliation Officer."

"12. Duties of conciliation officers.-

(1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and the notice u/s 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

(2) The Conciliation Officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the Conciliation officer shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in Sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government;

Provided that, subject to the approval of the Conciliation Officer, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute."

"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.

(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 (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 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 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".

The above provisions indicate that it is open always to the management to arrive at any settlement with the workmen otherwise than through conciliation u/s 18(1), but the same would be binding only between the parties; whereas a settlement arrived at in the course of conciliation proceedings u/s 18(3) binds all the parties. A settlement arrived at otherwise than in conciliation proceedings acquires the effects of a conciliation settlement when it is duly certified by the Conciliation Officer u/s 12(3) of the Act.

8. It is no more *res integra* that an agreement entered into between a majority union and the management can be got certified by the Conciliation Officer and converted into a conciliation settlement provided it is fair and reasonable, after the Bench decision of this Court in *Secretary, Plantation Employees Union of South India (KTUC), Kottayam v. Estate Staff Union of South India* 1991 Lab.I.C. 1393 wherein it is held as follows:

"The agreement entered into between a majority union and the management can be got certified by the Conciliation Officer and converted into a conciliation settlement provided it is fair and reasonable. When once such an agreement is presented before the Conciliation Officer in the prescribed form, it is his duty to ascertain whether the union which has entered into an agreement is a majority union and commands the support of the majority of the workers in the establishment and whether the agreement is fair and reasonable. On such satisfaction, the Conciliation Officer is bound to certify that agreement as a conciliation agreement so as to bind all the parties to the dispute including the persons who were not parties to the agreement. The fact that the industry takes

in also the public sector undertaking does not preclude the bipartite settlement from being converted into a conciliation settlement."

True, the Division Bench held the view that an agreement entered into with a majority union can be presented before the Conciliation Officer for certification. But a close reading of the said decision would show that the thrust is not on the majority union, but the support of the majority of the workers. In the instant case the petitioner union is the majority union and the 6th respondent is the minority union. Ext. R5(a) bilateral agreement is with the said minority union. But that was followed by Ext.R5(c) and R5(e) settlements by a section of the majority union, namely 187 and the position as of now is that there is an agreement by the management with the majority of the workmen namely 58.13% though not with the majority union. For the purpose of certification u/s 12(3) read with Rule 58 of the Central Rules, understood in the light of the Division Bench decision in 1991 Lab.I.C. 1393 supra, it has to be held that the agreement entered into with the majority of the workmen is also liable to be processed for certification u/s 12(3), provided of course the Conciliation Officer is satisfied that the agreement is fair and reasonable. It is significant in this context to note that the expression "majority" is used in this background only in Section 19 of the Act in the matter of termination of settlement where the notice is to be given by "party representing the majority of persons bound by the settlement".

9. The cardinal purpose of any conciliation settlement is industrial peace. Merely because the terms of a settlement are fair and reasonable it need not be taken that there is peace and there is amicable settlement of all the issues. Section 12(2) casts a duty on the part of the Conciliation Officer to arrive at a fair and amicable settlement. The first attempt on the part of the Conciliation Officer should be to have an amicable settlement, since that alone brings industrial peace and since an amicable settlement pre-supposes the terms of the settlement to be fair. Only in the event of an amicable settlement not being possible after the Conciliation Officer doing "all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement:", the question of investigation by the Conciliation Officer arises as to whether the terms of the settlement already arrived at between the management and the majority of the workmen is fair and reasonable. The apprehension of the management that it would lead to industrial unrest is misplaced and baseless. It would only give better rest. It is significant to note that the petitioner union is not against the terms of settlement already reached; they contend that being a long term settlement, there should be settlement on the issues referred as unsettled in Ext. P3. It is submitted that as of now only two are left: (1) upgradation, (2) uniform/washing allowance. Being a Section 18(1) settlement arrived at by agreement between only part of the workmen (major part may be) and the employer which is processed for certification u/s 12(3) read with Rule 58 of the Industrial Disputes (Central) Rules, 1957, a further attempt for amicable settlement in the process with the participation of all concerned is mandatory. Since the Conciliation Officer is thus duty bound to strive for an amicable

settlement, as part of the certification of the settlement already entered into with the majority workmen, he should call the management and the unions as also the parties to the settlement presented for certification and make an attempt towards that end.

10. Therefore, I make it clear that the process of an enquiry as to whether the terms are fair and reasonable, has to be done with notice to the petitioner, the management, 6th respondent and other parties to the settlement. But in the process the Conciliation Officer should also make earnest endeavours to see whether it is possible to have an amicable settlement on the two minor areas left to be settled namely in the matter of upgradation and uniform/washing allowance.

The Original Petition is disposed of as above.