

(2011) 12 UK CK 0023

In the Uttarakhand High Court

Case No : Writ Petition No. 1761 of 2006 (M/S)

Dawa Udyog Kamgar Union, Haridwar

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K, 7

Citation : (2012) 3 LLJ 129 : (2013) 1 UC 360

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala

1. Heard Mr. Pankaj Miglani, the learned counsel for the petitioner, Mr. Sudhir Kumar, the learned brief holder for the respondent nos. 1 to 3 and Mr. Rajendra Dobhal, the learned senior counsel assisted by Mr. Vijay Khanduri, the learned counsel for the respondent no. 4. The facts leading to the filing of the writ petition is, that the petitioner union moved an application before the Secretary, Ministry of Labour highlighting the grievances of its members against the employer, namely, Divya Pharmacy, Divya Yog Mandir Trust, Kankhal, Haridwar respondent no. 4 with regard to payment of minimum wages to be paid to the workers. A carbon copy of that letter was also sent to the Conciliation Officer. On the basis of this complaint, a notice dated May 7, 2005 was issued by the Conciliation Officer directing the parties to appear before him on May 13, 2005. This issuance of notice was the start of the initiation of the conciliation proceedings. The conciliation proceedings eventually culminated on May 21, 2005 when a settlement was arrived at between the petitioner and the employer. The settlement was arrived at in terms of Rule 5 of the U.P. Industrial Disputes Rules, 1957 (hereinafter referred to as the Rules) and was signed in Form I as prescribed under the Rules.

2. The settlement contemplated that the status of May 5, 2005 will be restored between the parties and that the employees of the petitioner union will end their agitation and maintain discipline and that the employer would take no action against the workers and that the workers would be paid the salary of April, 2005. In spite of the settlement, it is alleged that the employer backtracked on the settlement which led to further agitations, dharnas, etc., including destruction of property. Since the settlement was not enforced, the petitioner made a representation before the authorities for the enforcement of the settlement. When their plea fell on deaf ears, the petitioner filed a Writ Petition No. 1551/2005 (M/S) before this Court praying for a writ of mandamus commanding the State Government to enforce the settlement dated May 21, 2005. This Court, by a judgment dated April 10, 2006, disposed of the writ petition directing respondent nos. 1, 2 & 3, namely, the State of Uttaranchal through its Secretary, Ministry of Labour, Civil Secretariat, Dehradun, the District Magistrate, Haridwar and the Conciliation Officer to decide the representation of the petitioner within a period of two months from the date of production of the certified copy of the order.

3. Pursuant to the order of this Court, the Conciliation Officer passed an order dated August 30, 2006 holding that the settlement dated May 21, 2006 cannot be enforced as there is bad blood between the parties and that neither of the parties are prepared to accept the demands of the other party. The Conciliation Officer, consequently, recommended that the dispute be referred for adjudication under the U.P. Industrial Disputes Act, 1947. Pursuant to the order of the Conciliation Officer dated August 30, 2006, the State Government issued an order dated September 6, 2006 u/s 4-K of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the Act) referring the dispute for adjudication to the Industrial Tribunal, Haldwani.

4. The petitioner, being aggrieved by the order of the Conciliation Officer dated August 30, 2006 and by the order of the State Government dated September 6, 2006 referring the dispute for adjudication, has filed the present writ petition.

5. The submission of the learned counsel for the petitioner is that once a settlement was arrived at between the parties during the conciliation proceedings, the same became enforceable in law and the matter could not be referred for adjudication again before the Tribunal. The learned counsel for the petitioner submitted that the award was liable to be enforced in consonance with the provision of Rule 5 of the Rules read with Section 7 of the U.P. Industrial Disputes Act (hereinafter referred to as the Act).

6. On the other hand, the learned senior counsel for the employer respondent no. 4 submitted that the settlement could not be enforced and became inexecutable and that the State Government was justified in referring the dispute before the Industrial Tribunal where the matter is pending consideration. The learned senior counsel submitted that the petitioner is participating in these proceedings and, therefore, this Court should not interfere in the matter. The

learned senior counsel further submitted that the settlement so arrived at was not registered and, therefore, the same cannot be enforced u/s 7 of the Act.

7. On the other hand, the learned brief holder for the State submitted that a settlement was arrived at during the conciliation proceedings and the State Government was empowered to enforce the settlement under sub-rule (4) of Rule 5 of the Rules, but, in its wisdom has referred the matter for adjudication u/s 4-K of the Act in consonance with the provision of Section 12 of the Act and, therefore, it would be appropriate that the dispute is culminated into an award by the Tribunal, which could be enforced in accordance with law.

8. Having heard the learned counsel for the parties at some length, it would be appropriate to refer to certain provisions of the Act. A dispute outside conciliation proceedings can be settled and, thereafter, registered in accordance with the provision of Section 6-B of the Act. In the present case, the said Section is not applicable in as much as the settlement was arrived at during the conciliation proceedings before the Conciliation Officer. Rule 4(1) of the Rules provides the powers, procedure and duties of Conciliation Officer wherein the Conciliation Officer, on receipt of the information about an existing or apprehended industrial dispute, will forthwith arrange an interview between the employer and the workmen and shall endeavour to bring out a settlement between the parties. Rule 5 of the Rules provides how a settlement is to be arrived at, how a settlement is to be signed and how it can be enforced. For facility, Rule 5 of the Rules is extracted hereunder:

5. Memorandum of Settlement - (1) A settlement arrived at before a Conciliation Officer or otherwise outside the conciliation proceeding shall be in Form I.

(2) The settlement shall be signed -

(a) in the case of an employer, by the employer himself or by his authorized agent or when the employer is an incorporated company or other body corporate, by the agent, manager, or other principal officer of the corporation; and

(b) in the case of a workman, either by the workman himself or by the President or the Secretary of the Union of Workmen, competent to represent the workman u/s 6-I, or of a Federation of such Unions, or by an Officer of such Union or Federation authorized in this behalf by the President of such Union or Federation, or where there is no such Union, by five representatives of the workmen duly authorized in this behalf at a meeting of the workmen held for the purpose.

(3) Where a settlement is arrived at before a Conciliation Officer otherwise than in the course of conciliation proceedings before a Board, the Conciliation Officer shall send a report thereof to the Government with the copy to the Labour Commissioner, Uttar Pradesh.

(4) The State Government shall, subject to the provisions of Clause (ii) of Section 7, issue orders in Form III-A, for enforcing any settlement arrived at before a Conciliation Officer in the course of conciliation proceedings.

Sub-clause (2) of Rule 5 provides that a settlement has to be signed by the employer as well as by the workman in Form-I before the Conciliation Officer and if the procedure is followed, the settlement could be enforced in Form III-A u/s 7(ii) of the Act. For facility, Section 7(ii) of the Act is extracted hereunder:

7. Power to continue order passed under other enactments - Without prejudice to the generality of the powers vesting under the provisions of this Act the State Government may, by order, for the purposes contemplated in Section 3 -

(i).....

(ii) enforce in the prescribed manner for such period as may be specified, the whole or any part of an agreement reached in conciliation proceedings between the parties to an industrial dispute.

9. From the aforesaid provision, it is clear that a settlement which was arrived at in Form I can be enforced u/s 7(ii) of the Act by the State Government by issuing an order in Form III-A. Form III-A provides that any person, who contravenes or attempts to contravene any term of the settlement, shall be liable, on conviction u/s 14 of the U.P. Industrial Disputes Act, 1947, to fine or to imprisonment not exceeding three years or both. In the light of the aforesaid provision, it is apparently clear that the settlement, which was arrived at between the petitioner and the employer, was signed by the parties in the presence of the Conciliation Officer in Form I. Rule 5 of the Rules does not contemplate that the settlement is required to be registered. Sub rule (4) of Rule 5 clearly indicates that the settlement so arrived at can be enforced by the State Government u/s 7(ii) of the Act by issuance of an order in Form III-A. Admittedly, a settlement was arrived at. The Conciliation Officer had no jurisdiction to state that by the conduct of the parties, the settlement could not be executed. The Conciliation Officer had no jurisdiction to hold that the dispute should be referred for adjudication. Once a settlement has been arrived at, the Conciliation Officer ought to have forwarded the grievance of the petitioner to the State Government for enforcement of the settlement u/s 7(ii) of the Act. Since the same was not done, the order of the Conciliation Officer cannot be sustained and is quashed. As a result of the quashing of the order of the Conciliation Officer, the recommendation made to the State Government to refer the dispute for adjudication and the consequential order of the State Government referring the dispute u/s 4-K of the Industrial Disputes Act cannot be sustained and are quashed. The writ petition is allowed and a writ of mandamus is issued directing the State Government to enforce the settlement dated May 21, 2006 which was arrived at between the petitioner and respondent no. 4 in terms of Section 7(ii) of the Act. Necessary order shall be passed by the State Government within four weeks from the date of production of a certified copy of this order.