

(1960) 09 CAL CK 0031
In the Calcutta High Court
Case No : O.S. Matter No. 112 of 1960

Deepak Industries Ltd.

APPELLANT

Vs

S.R. Ghosh

RESPONDENT

Date of Decision : 15-09-1960

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10A, 18(3), 19(2)

Citation : (1961) 2 ILR (Cal) 512

Hon'ble Judges : Sinha, J

Bench : Single Bench

Judgement

Sinha, J.—The facts in this case are shortly as follows: The Petitioner is a company employing about 200 workmen. Certain disputes arose between the company and its workmen, resulting in conciliation proceedings. What happened was that the workmen, through the new Allenberry Works Employees Union, submitted two charters of demand on August 9, 1957, regarding several matters including leave and holidays. The matter was taken up for conciliation, and meetings were held by the Conciliation Officer. During the pendency of the conciliation proceedings, the parties agreed to settle the outstanding disputes and a memorandum of settlement was executed on November 20, 1957, a copy whereof is annexure "A" to the petition. Previous to this, there was another agreement between the management and the workers and Clause 12 of the settlement expressly stated that the previous agreement entered into between the management and the workers would stand cancelled. Under Clause 13, this agreement was to be binding on both the parties for a period of one year, and after that it might be terminated by either party after giving one month's notice. On December 10, 1957, the General Secretary of the said Union wrote to the Conciliation Officer that a general meeting of the Union had been held on October 26, 1957, and it had been decided that there would not be any compromise with the employer and the workmen would only be satisfied with the decision of the Government. It was stated that in the face of this resolution, the signatories to the agreement on behalf of the Union, namely the Vice-President,

the General Secretary and a temporary worker had no authority to enter into an agreement, and it was not binding on the workers. It was stated that the Executive Committee of His Union and the general members, unanimously passed a resolution of "no confidence" against the signatories to the agreement, namely, the Vice-President, Assistant Secretary and a temporary worker. The company, however, took up the attitude that the agreement was binding and gave effect to it. As the workmen approached the Conciliation Officer, certain meetings were held but it was stated that nothing could be achieved due to the adamant attitude of the company. On October 3, 1958, an agreement was entered into between the company and the workmen represented by a new Union, namely, the New Allenberry Workers' Association and one of the terms of the agreement was as follows:

Both the parties agree that the dispute of leave and holidays pending before the Labour Directorate shall be referred to Tribunal.

2. In this agreement, unlike the first one, there is no clause to the effect that all earlier agreements will stand cancelled. By an order, dated February 21, 1959, a reference was made to an Industrial Tribunal, and the dispute referred was "leave and "holidays". The order of reference does not state that the reference was under an agreement. It purports to be a reference u/s 10 of the Industrial Disputes Act. The order merely states that there was an industrial dispute between the workers represented by the New Allenberry Works Workmen's Association and the company, and that it was referred for adjudication to the Third Industrial Tribunal. It was not done in the manner as laid down by Sub-section (2) of Section 10, nor was it a reference by agreement u/s 10A. Before the Tribunal, the workers, through their Union, filed a written statement stating that the alleged agreement, dated November 20, 1957, was not binding on the workers and had been entered into without the authority of the workers or the Executive Committee. Paragraph 16 of the written statement runs as follows:

That though the said agreement was not binding in law or in equity and had no legal or moral sanction behind it, the Company in an arbitrary and high-handed manner, made the said agreement, tried to make the agreement a law and questioning the same dispute was raised by the letter, dated 10-12-57, copy marked Annexure "B" and thus the very basis of the mala fide agreement was challenged.

3. The written statement proceeds to state that the company having taken an adamant attitude to enforce the first agreement, the Union took up the matter with the Labour Commissioner and several conciliation meetings were held, and since nothing could be achieved, an order of reference was made for adjudication. In this written statement, the second agreement is not referred to, but only the first agreement is annexed. The company, in its written statement took up the attitude that the first agreement was perfectly valid and binding, and the New Allenberry Works Workmen's Association had never issued a charter of demand relating to the issue of leave and holidays. The written statement of the

company inter alia contains the following statements:

4. That since the date of the settlement (20-11-57) till the date of the order of reference 121-2-59) there has not been any conciliation proceedings over the present issue of leave and holidays with the Labour Commissioner at any date nor was there any charter of demands of the Union on the point. In such view of the matter the present order of reference was illegal inasmuch as the Government did not apply its mind according to the provisions of law before making the order of reference.

The point taken was that there being this prior agreement which had not been terminated in accordance with Section 19(2) of the said Act, the reference was incompetent, and the Tribunal had no jurisdiction. The Tribunal made its award on January 15, 1980, a copy whereof is annexure "C" to the petition. The Tribunal noticed that the Union did not admit the validity of the first agreement, but it does not decide as to whether it is binding or not. It proceeds to say as follows:

It will thus be clear that by a subsequent agreement between the management and the union dated 3-10-58 the alleged agreement, dated 20-11-57 regarding leave and holidays was rescinded to all intents and purposes and the dispute of leave and holidays was agreed to be referred to the tribunal while the latter agreement was in operation. So, the effect of the second agreement was to terminate; the first agreement regarding leave and holidays and to refer a fresh dispute of leave and holidays to the Industrial Tribunal by mutual agreement.

5. The Tribunal by the award has granted leave and holidays much in excess of the leave and holidays agreed to between the parties under the first agreement. The short point that, arises in this case is as to whether there was a settlement in terms of Sub-section (7) of Section 19 of the said Act and whether such settlement was brought to an end in terms of Sub-section (2), and if not, whether the "reference was valid. Section 19(2) of the said Act provides as follows:

Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

6. u/s 18(3) of the said Act, a settlement arrived at in the course of conciliation proceedings under the Act was binding on all parties to the industrial dispute and where such a party was composed of workmen, all persons who were employed in the establishment to which the dispute related, on the date of the dispute, and all persons who subsequently became employed in [that establishment were bound by it. In this case, the first settlement is said to have been arrived at in

the course of conciliation proceedings between the company and its workmen represented by the New Allenberry Works Employees' Union. It appears from the memorandum of settlement itself (annexure "A" to the petition) that the said Union was represented by the Vice-President, Secretary and a worker. Immediately after the alleged agreement was entered into, it was repudiated on behalf of the Union. It was stated that these three persons had colluded with the company and entered into a settlement, although the workmen had already passed a resolution stating that no settlement should be entered into. This dispute went on and the matter was again placed before the Conciliation Officer. When the second alleged agreement was entered into, on October 3, 1958, the works were represented by a new Union, namely the New Allen berry Works Workmen's Association. I have not sufficient material before me to show how this new Union came into existence. It however, seems that while the agreement resolved many other disputes, both the company and the workmen agreed that the dispute regarding leave and holidays pending before the Labour Directorate shall be referred to a tribunal for adjudication. It is nearly a year after this alleged agreement that the order of reference was made. If the alleged agreement, dated November 20, 1957, be a valid agreement, then it would be binding on all workers and such a settlement u/s 19(2) would be binding even after the expiry of one year, mentioned in the agreement, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by the workmen to the company. Therefore, two things have to be considered in this case. Firstly, can we say that there was a binding settlement, and was such a notice given. The facts are that immediately after the first agreement was entered into, the workmen disputed its validity and tried to re-open the question of leave and holidays, and both the company and the workmen agreed by the second agreement that the dispute which was pending before the Labour Directorate shall be referred to a tribunal for adjudication. By the time that the second agreement came to be entered into, the period of one year had not expired. Before the tribunal, the issue distinctly raised was as to whether the first agreement was binding upon the parties. The tribunal, however, does not decide the point but at once comes to the conclusion that it is binding and then proceeds to hold that the first agreement was "rescinded" to all intents and purposes, and the dispute of leave and holidays was agreed to be referred to a tribunal. The tribunal holds that the effect of the second agreement was to terminate the first agreement regarding leave and holidays and to refer a fresh dispute to the Industrial Tribunal by mutual agreement. In my opinion, this decision is erroneous for more than one reason. Once the tribunal had come to the conclusion that the first settlement was a valid settlement of disputes during conciliation proceedings, then according to Section 18(3) it would be binding on all workmen and it could only be brought to an end in terms of Section 19(2). It could not be brought to an end in any other way. u/s 19(2), such a settlement is at least binding for a period of one year as is agreed upon by the parties. After the expiry of one year, it would continue to be binding unless there was a notice given in writing of an intention to terminate the settlement by one of the parties

to the other party. In this case, even before the expiry of one year, the so-called second agreement, was brought into existence which totally ignored the first settlement. As the dispute was agreed to be referred for adjudication, that is to say, re-opened again, the question is as to whether, regard being had to Section 19(2), this is permissible even before the expiry of one year, which was the period agreed upon by parties under the first settlement to be the period during which the first settlement would be binding. In my opinion, it cannot be done. A similar situation arose in *India Industrial Works v. Workmen of India Industrial Works* (1956) L. A. C. 408. In that case, there was an award in an industrial dispute. u/s 19(3), an award is to remain in operation for a period of one year, and u/s 19(6), notwithstanding the expiry of the said period, the award is to continue to be binding on the parties until a period of two months have elapsed from the date on which a notice is given by one party to the other intimating its intention to terminate the award. What happened was that before the expiry of one year, and notwithstanding the award, the parties agreed to refer the matter for adjudication and it was so referred. It was held by the Labour Appellate Tribunal that this was not permissible. The tribunal remarked that it might be argued that it was strange that although the parties themselves agreed that the existing award should not be binding they should be compelled to be governed by it. It was however pointed out that it was not really strange, because in an industrial adjudication, it was not desirable that when finality had once been reached, it should be re-opened except in the way that has been laid down by the law. It was held that the reference was invalid. I think that the same principle should be applied here. In this case settlement had been arrived at, and the parties agreed that it should be valid for one year. One could understand if the settlement itself could be successfully challenged. The tribunal however held that the first agreement was a valid one. It follows that the settlement should remain in operation for at least the agreed period and I cannot see any power in the parties during that period to rescind the settlement. The next question to be considered is as to whether the second agreement could be held to be a notice in terms of Section 19(2). I do not see how this can be taken to be such a notice. The notice contemplated in Section 19(2) is a notice given after the expiry of the agreed period, and it should be a notice in writing of an intention to terminate the settlement. Firstly, no notice was given after the expiry of the period of settlement. Secondly, it could not be a notice of an intention to terminate the settlement, because the workmen were challenging the first settlement itself and this dispute was pending before the Labour Directorate and this particular clause in the second agreement merely states that the question about leave and holidays could be referred for adjudication. "While in the first agreement there is a specific clause stating that all previous agreements were cancelled, there is no such clause in the second agreement. This is understandable because the workmen were not admitting that there was any subsisting agreement which had settled the dispute. In my opinion, there can be no question of rescinding the first agreement, because the first agreement was not acceptable to the workmen as such. If the first settlement was not a binding settlement, then of course, the

second settlement would be valid and operative. But if the first settlement exists and is valid, then I cannot see how the parties could ignore the settlement, and before the expiry of the period during which the settlement was valid, agreed to treat it as non-existent and proceed to have an adjudication of the dispute, as if the matter was an open one. In my opinion, such a course of action is entirely violative of Sub-section (2) of Section 19. It would be observed that the tribunal does not say that the second agreement operates as a notice of termination in terms of Section 19(2). It holds that by the second agreement the settlement arrived at by the first agreement had been "rescinded". That being so, I think that the award is erroneous on the face of record. The learned advocate on behalf of the workmen has admitted that the tribunal ought to have decided the question as to whether the first agreement was binding upon the parties. He argued however that the tribunal had held against the workmen and, therefore, the Petitioner was not prejudiced. He argued that the second agreement operated as a notice under Sub-section (2) of Section 19 terminating the first agreement. Firstly, that is not what the Tribunal has held. Secondly, for reasons stated above, I am unable to come to the conclusion that the second agreement can be said to be a notice in terms of Sub-section (2) of Section 19. Firstly, it came into existence before the expiry of the period during which the first agreement remained valid and binding, and secondly, there is nothing in it which establishes an intention to terminate the first settlement. It was the outcome of one of the parties-repudiating the first settlement, and treating it as non-existent. The workmen cannot be heard to say that the first agreement does not exist and yet give notice of terminating the same. At best the same argument can be advanced as was advanced in *India Industrial Works v. Workmen of India Industrial Works*, (supra) to the effect that it would be strange if the parties to an agreement could not themselves bring it to an end. The short answer is that the law lays down how such a settlement should be brought to an end. While a contract can be rescinded by an agreement, it is not the policy of the Industrial Disputes Act that once an industrial dispute has been settled, it should be reopened, except strictly in terms laid down by statute, and not merely by agreement of parties. As the tribunal had decided that the first settlement was valid, and as there was no notice in terms of Sub-section (2) of Section 19 terminating the said settlement, it had no jurisdiction to go behind the settlement and decide the dispute upon merits. It will further be observed that the reference was u/s 10 and not Section 10A of the Industrial Disputes Act.

7. The result is that this Rule must be made absolute and there will be issued a writ in the nature of certiorari quashing the award of the Third Industrial Tribunal, dated January 15, 1960 and there will also be a writ in the nature of mandamus directing the Respondents not to give effect to the same. This will, however, be without prejudice to the parties proceeding now in accordance with law.