
(2003) 06 BOM CK 0108
In the Bombay High Court
Case No : Writ Petition No. 2384 of 1999

Dilip P. Mehta

APPELLANT

Vs

Mercury Paints and Varnishes Limited and Others

RESPONDENT

Date of Decision : 12-06-2003

Acts Referred:

Citation : (2003) 6 BomCR 261

Hon'ble Judges : Khandeparkar R.M.S., J

Bench : Single Bench

Advocate : P.M. Patel, for the Appellant;

Final Decision : Dismissed

Judgement

Khandeparkar R.M.S., J.—Heard the learned Advocate for the petitioner. None present for the respondent Nos. 1 and 2, though served. Perused the records.

2. The petitioner challenges the judgment and order dated 15-3-1999, passed by the Industrial Court dismissing the complaint filed u/s 28 r/w Items 5 and 9 of the Schedule-IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971, hereinafter called as "the said Act". The grievance of the petitioner is that the petitioner has been denied the benefits payable in terms of the Settlement dated 28-8-1991 even though such payments are being made to other workmen. The defence of the respondents is that the petitioner has not furnished the necessary declaration in terms of the Clause 24 of the Settlement and considering the provisions of the Clause 25 of the Settlement, the respondents are not liable to pay the dues to the petitioner and that therefore there is no case of any unfair labour practice being adopted by the respondents. The Industrial Court after considering the terms of the Settlement dated 28-8-1991 under which the dues were claimed by the petitioner, and considering the fact that the petitioner has not accepted the said settlement, dismissed the complaint while placing reliance in the decision of the Apex Court in the matter of Balmer Lawrie Workers' Union, Bombay & another v. Balmer

Lawrie & Co. Ltd. & others, reported in 1985(1) C.L.R. 103. Hence, the present petition.

3. While assailing the impugned judgment and order, the learned Advocate for the petitioner, submitted that in terms of one of the clauses of the Settlement dated 28-8-1991, the employees are required to pay donation to a Trust as well as subscription to the union and the petitioner objected to those provisions, the same being relating to the compulsory and coercive payment of money either to the trust or the union by the employees. Further, that section 2(k) of the Industrial Disputes Act, 1947, defines the term "industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. Considering the said definition of the term "industrial disputes", according to the learned Advocate, the terms of the Settlement could only relate to the terms of employment or the conditions of labour and the provision relating to the requirement of payment of donation or subscription cannot have any relationship to the terms of employment or conditions of labour and, therefore, the said clause is per se illegal and cannot be binding upon the petitioner and therefore merely because the said clause is not accepted by the petitioner, the petitioner cannot be denied the benefits which he is otherwise entitled to under the said Settlement as such benefits are being enjoyed by other workmen, and having so denied, the respondents are guilty of unfair labour practice being adopted against the petitioner.

4. Apparently, the grievance of the petitioner relates to non-compliance of the terms of Settlement in relation to the petitioner even though the benefits under the said Settlement are made available to the other workmen. However, as rightly observed by the Industrial Court the fact remains that the petitioner has not accepted the Settlement dated 28-8-1991 in as much as that he has not furnished the necessary declaration in terms of the Clause 24 of the said Settlement. The Clause 24 of the Settlement clearly requires the workman desiring to avail the benefits under the said Settlement to sign the declaration form in the specimen set out in Schedule-B attached to the Settlement. The Clause 25 of the Settlement provides that in case any workman fails to sign the declaration form stipulated in the Clause 24 of the settlement, he shall not be eligible to receive from the company any benefits under the said settlement and shall continue to be governed under the conditions of service existing on the eve of the said settlement, and for such a workman it would be considered that the said settlement was not signed at all. The Clause 23 of the said Settlement also provides that any workman accepting the benefits under any of the clauses of the said settlement shall be bound by all the terms of the settlement. The Apex Court in the matter of Balmer Lawrie Workers' Union, Bombay & another v. Balmer Lawrie & Co. Ltd. & others (supra) has held that after considering the various provisions of law, including section 2(k) of the Industrial Disputes Act, 1947, and the various other decisions has held thus :-

"If under a settlement with the representative union some benefits accrue to the workmen, and upon a true interpretation of section 20(2)(b), it is held all encompassing and therefore binding on all workmen and the employer alike, all the benefits would be available to the workmen who are not members of the representative union and who may have formed a rival union. If these workmen could not be denied the benefits they would enjoy an unfair advantage if from the package deal covered by the settlement, they draw benefits and abjure liabilities. Heads I win and tails you lose could hardly be a fair and just approach in settling inter-union disputes. Therefore a clause like Clause 17 of the Settlement has to be understood in the context of strengthening the trade union movement and to free it from financial constraints. Workmen who are members of a union may pay fee for membership and enjoy and advantage of membership but if by the action of the representative union all workmen acquire benefit or monetary advantage, the members and non-members alike can be made to make common sacrifice in the larger interest of trade union movement and to strengthen the trade union which by its activities acquired the benefits for all workmen. Payment to trade union fund in these circumstances can be styled as Quid pro quo for benefits acquired. Therefore, we see nothing objectionable in Clause 17 of the Settlement which directs the employer to deduct 15% of the gross arrears payable to each employee under the settlement as contribution to the trade union funds. Thereby the workman is not subscribing to the philosophy of rival union but he is merely paying the price of the advantage obtained. Another view would make the union members suffer and the non-members benefit, a situation which must at all costs be avoided. Therefore Clause 17 of the Settlement would not be invalid despite the lack of the consent of the workmen who are members of the appellant union. The settlement having been made by the representative union in its right to represent all workmen would imply the consent of the members of the rival union. This is the legal consequence of the right of the representative union to represent all workmen and the binding effect of its action."

Once it is clear that the petitioner has not accepted the said settlement in accordance with the provisions contained in the said settlement, no right accrues in favour of the petitioner under the said settlement. The terms of the Settlement specifically makes provision as regards the procedure to be followed by the employees for acceptance of the settlement while making such procedure to be mandatory for claiming benefit under the settlement, while simultaneously providing for disentitlement for benefit under the scheme in the absence of compliance of the said procedure, and admittedly the said procedure has not been complied with by the petitioner. Being so, no existing right subsists in favour of the petitioner under the said Settlement and being so, there was no cause for accruing the respondents of adopting unfair labour practices vis a vis the petitioner for not granting the benefit under the said settlement to the petitioner. In order to avail the benefit under the said settlement, the petitioner has to first accept the said settlement in the manner as provided under the said

settlement and only thereafter in case of denial of the benefits thereunder, the question of considering the case of adopting of unfair labour practices by the respondents may arise. In the circumstances, therefore, no fault can be found with the findings arrived at by the Industrial Court while rejecting the complaint, as they are clearly borne out from the records and do not disclose any perversity. Hence there being no case made out for interference in the impugned judgment and order in writ jurisdiction, the petitioner fails and is hereby dismissed. The Rule is discharged with no order as to costs.