
(1991) 07 AP CK 0022

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1184 of 1987

Eid Parry (India) Ltd.

APPELLANT

Vs

Labour Court, Guntur and Others

RESPONDENT

Date of Decision : 19-07-1991

Acts Referred:

Industrial Disputes Act, 1947 — Section 17, 17(1), 18, 18(1), 18(3)

Citation : (1991) 3 ALT 161 : (1992) 2 LLJ 580

Hon'ble Judges : Syed Shah Mohammed Quadri, J

Bench : Single Bench

Judgement

1. The employer M/s. E. I. D. Parry (India) Ltd., is the petitioner in this writ petition. The petitioner, hereinafter referred to as "Parry Company", prays for a writ of Certiorari to call for the records from the 1st respondents in I.D. Nos. 12 of 1986 and 34 of 1986 and quash the common award dated March 25, 1987.

2. Respondents 2 to 4 were the employees of Parry Company. It seems a settlement was entered into between Parry Company and the Parry's Staff and Labour Union, hereinafter referred to as "the Union", u/s 18 of the Industrial Disputes Act on June 17, 1978. That award, inter alia, provided that the strength of the staff of the Company might be fixed at 265 and that 24 casual workmen be made permanent as "Pool workmen". After the expiry of the period of that settlement a fresh settlement was entered into between the Parry Company and the Union on July 24, 1982 u/s 18 of the Industrial Disputes Act under which it was agreed that not less than 100 workmen would opt to leave the service under "separation compensation plan" and that the vacancies caused thereby should not be filled up. The validity of that award was the subject matter of I.D. No. 8 of 1983. On April 16, 1983 the Industrial Tribunal passed an award holding that the settlement was not justified, the correctness of which was challenged by the Parry Company in W.P. No. 16027 of 1984. During the pendency of the writ petition a fresh settlement was entered into between the parties pursuant to which it was agreed that the strength of the man-power would be assessed and

determined based on the requirement of the Company from time to time and that in the first instance the strength would be reduced by 60 under voluntary retirement scheme. It was also provided that if the number of workmen who opted under that scheme fell short of 60, the company would be entitled to retrench the employees to make up the proposed reduction in the staff by 60. The draft of this award, it is stated, was approved by the Executive Committee of the Union on March 14, 1985. On the March, 1985 it is stated to have been approved in the General Body Meeting and on March 28, 1985 the settlement was signed by the representatives of the Parry Company and the office-bearers of the Union. Under the said settlement respondents 2, 3 and 4 received Rs. 2,500/- each. The said settlement was also filed in Writ Petition No. 16027 of 1984 for replacing the award dated June 17, 1978 which was the subject matter of the writ petition. 57 workmen opted under the voluntary retirement scheme under the above settlement dated March 28, 1985. The Parry Company retrenched respondents 2, 3 and 4 offering three months wages in lieu of notice and retrenchment compensation at the rate of 15 days average pay for every completed year of service or part thereof, on July 29, 1985. However respondents 2 to 4 refused to receive the letter of retrenchment; but the cheques for the amount and the orders of retrenchment were sent by registered post with acknowledgment due. The said respondents raised a dispute before the Conciliation Officer with regard to their retrenchment which was eventually referred to the Labour Court, Guntur, by the State Government. The dispute relating to the retrenchment of 2nd respondent was numbered as I.D. 34 of 1986 and the dispute relating to the retrenchment of respondents 3 and 4 was numbered as I.D. 12 of 1986.

3. Both sides adduced oral and documentary evidence before the 1st respondent. By a common award dated March 25, 1987 the 1st respondent held that respondents 2 to 4 (the workmen in the said industrial disputes) were entitled to be reinstated with back wages, continuity of service and all other attendant benefits.

4. Sri K. Srinivasa Murthy, the learned counsel for the petitioner, submits that the factory of the Parry Company is a small scale unit and it suffered heavy loss due to which it decided to reduce the strength of the staff and entered into an agreement with the Union u/s 18 of the Industrial Disputes Act (for short "the Act"); even if respondents 2 to 4 are not signatories to the settlement dated March 28, 1985 the same is binding on them. It is also contended that the 1st respondent erroneously assumed certain disputed facts as admitted facts and proceeded to pass the award. If the workman, submits the learned counsel, refuses to receive the retrenchment notice and the pay in lieu of notice, it cannot be said to be violation of Section 25F of the I.D. Act, therefore the finding in the award that there is violation of Sec. 25-F is wholly erroneous. The learned counsel further submits that having regard to the settlement, there was no need to obtain permission u/s 25N(1)(b) of the Act and that on the material date the strength of the workmen in the Parry Company was less than 100, therefore

Section 25N has no application. Without advertent to this fact, the learned counsel submits, the 1st respondent held that the Sec. 25N is violated, and prays that the impugned award may be quashed.

5. Sri M. Panduranga Rao, the learned counsel appearing for the 2nd respondent, submits that the order of retrenchment is in violation of Sections 25F, 25G and also Sec. 25N, therefore the Labour Court rightly set aside the order of retrenchment. He further submits that the Union had no authority to enter into the settlement, therefore the settlement is not binding on the workmen.

6. Sri P. Venkateshwarlu, appearing for respondents 3 and 4, submits that the settlement under which the retrenchment is resorted, is wholly unjust and unfair, so it is not binding on the employees. The learned counsel urges that no settlement can be entered into by the Union to terminate the services of employees. He strenuously contends that the retrenchment is violative of Sections 25F, 25G and 25N of the Act.

7. On the respective contentions of the parties, the following question arises for considerations :

"Whether the finding in the impugned award that retrenchment of respondents 2 to 4 was without following the principles laid down under the Industrial Disputes Act, is correct".

8. Chapter V-A of the Act deals with lay off and retrenchment. Section 25A provides that Sections 25-C to 25-E shall not apply to industrial establishments to which Chapter V-B applies. Chapter V-B provides special provisions relating to lay-off, retrenchment and closure in certain establishments. Section 25K says that the provisions of Chapter V-B shall apply to an industrial establishment not being an establishment of a seasonal character or in which work is performed only intermittently in which not less than one hundred workmen were employed on an average per working day for the preceding 12 months.

9. It is not disputed that the Parry Company is an industrial establishment and it is not an establishment of seasonal character. It is true that the question as to how many workmen on an average per day were employed in the preceding 12 months, which is a question of fact, was not determined by the 1st respondent Labour Court. Yet, referring to the evidence of the Deputy General Manager, the Labour Court found that the permanent strength of the workmen in the factory was 265. It is in evidence and also a finding of the Labour Court that 185 members supported in favour of the resolution. Even assuming that 157 of them left under different voluntary retirement schemes, it can safely be concluded that on the date of the retrenchment more than 100 persons were there in the establishment and on an average per day more than 100 workmen were being employed in the preceding 12 months by the petitioner company, therefore the provisions of Chapter V-B are attracted. Chapter V-B comprises of 9 sections (Sections 25-K to 25-S); of these; Section 25N contains conditions precedent to retrenchment of workmen and other connected matters. Sub-section (1) of the

said section enumerates the conditions precedent. Sub-section (2) prescribes the procedure for making an application and sub-section (3) specifies the procedure for making enquiry into the application. Sub-section (4) is a deeming provision and provides that if no order is communicated on the application of the employee within sixty days the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. Sub-section (5) says that an order passed by the appropriate Government or the specified authority shall be final subject to two exceptions, namely, the appropriate Government or the specified authority has the power (i) to review its order granting or refusing permission either suo motu or on the application of the workman or the employer; (ii) to refer the matter to a Tribunal for adjudication, as mentioned in sub-section (6). The Proviso to sub-section (6) prescribes time limit of thirty days for disposing of the reference by a Tribunal, sub-section (7) provides the consequences of non-compliance of sub-section (1). Sub-section (8) empowers the Government in the circumstance specified therein to direct that the provisions of sub-section (1) shall not apply in relation to establishment for such period as may be mentioned in the order. Sub-section (9) provides that the benefits which the workman would be entitled to, where permission for retrenchment is granted or deemed to have been granted, at the time of retrenchment, are compensation equivalent fifteen day's average pay for every completed year of continuous service or any part thereof in excess of six months.

10. Sub-sections (1) and (7) of Section 25N which are relevant for our purpose read as follows :-

"25-N. Conditions precedent to retrenchment of workmen :- (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer until,

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by Government by notification in the Official Gazette (hereinafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

Sub secs. (2) to (6) xxxxxx xxxxxx xxxxxxxx

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. From a reading of sub-section (1) of Section 25N it is clear that no employee who has been in continuous service for not less than one year under an

employer, can be retrenched by the employer until the following two requirements are complied with :

(i) The workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(ii) the prior permission of the appropriate Government or the specified authority has been obtained after making an application therefor.

These are conditions precedent to the retrenchment, which are mandatory.

12. Sub-section (7) provides that where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

13. Admittedly, in this case three months' pay in lieu of notice has been sent to the respondents, but they have not received the same. It is now well settled that giving of three months' notice or tendering wages in lieu of notice is enough and refusal of the notice or the pay in lieu of notice by the workman does not invalidate the notice or tender of payment, (Vide *Indian Oxygen Ltd. v. Narayana Bhounik*) (1968) 17 FLR 214. It follows that merely because the respondents have declined to receive the notice and wages in lieu of notice sent by registered post, it cannot be said that the workmen have not been given three months' notice or wages in lieu of such notice. Therefore, the first condition is complied with.

14. The other condition precedent is that the prior permission of the appropriate Government or specified authority should be obtained before effecting retrenchment.

15. Sri K. Srinivasa Murthy contends that by virtue of settlement dated March 28, 1985 the management is entitled to retrench as many employees as they fall short of 60 persons, therefore, the settlement prevails over the requirement of prior permission of the appropriate Government or the specified authority u/s 25N. The learned counsel for the respondents contend that as the settlement is not beneficial for the employees it cannot be enforced and as the respondents are not signatories to the settlement, the settlement cannot be said to be binding on the respondents-employees.

16. The aims and objects of the provisions of the Industrial Disputes Act include industrial peace which is essential to the industrial development and economy of the nation. Great emphasis is, therefore, laid on the settlements as they set at rest all the disputes and controversies between the employer and the employees. "Settlement" is defined in Section 2(p) of the Act 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 this behalf by the appropriate Government and the conciliation officer. Two types of settlement are contemplated under the Act (a) settlement entered into during the course of the conciliation, and (b) settlement arrived at by agreement between the employer and workmen otherwise than during the course of conciliation. In *General Manager, Security Paper Mill, Hoshangabad v. R. S. Sharma* (1966-I-LLJ-432) the Supreme Court pointed out the distinction between these two types of settlements. It is observed thus (p. 434) :

"A distinction is made in the Industrial Disputes Act, 1947 between a settlement arrived in the course of conciliation proceeding and a settlement arrived at by agreement between the employer and workmen otherwise than in conciliation proceeding both as regards the procedure to be followed in the two cases and as regards the persons on whom they are binding. Section 12 of the Industrial Disputes Act, 1947 lays down the duties of Conciliation Officer. Under sub-section (1) of Section 12 where any industrial dispute exists or is apprehended, the Conciliation Officer is required to hold conciliation proceedings in the prescribed manner. By sub-section (2) thereof he is charged with the duty of promptly investigating the dispute and all matters affecting the merits and the right settlement thereof for the purpose of bringing about the settlement of the dispute and he is required to do all necessary things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute. 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 that behalf by the appropriate Government together with a Memorandum of Settlement signed by the parties. Even though a Conciliation Officer is not competent to adjudicate upon the disputes between the management and its workmen he is expected to assist them to arrive at a fair and just settlement. He has to play the role of an adviser and friend of both the parties and should see that neither party takes undue advantage of the situation. Any settlement arrived at should be a just and fair one. It is on account of this special feature of the settlement sub-section (3) of Section 18 of the I.D. Act, 1947 provides that a settlement arrived at in the course of conciliation proceeding under that Act shall be binding on (i) all parties to the industrial dispute, (ii) where a party referred to in clause (i) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates and (iii) where a party referred to in clause (i) is comprised of workmen, all persons who were employed in the establishment or part of the establishments 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. Law thus attaches importance and sanctity to a settlement arrived at in the

course of a conciliation proceeding since it carries a presumption that it is just and fair and makes it binding on all the parties as well as the other workmen in the establishment or the part of it to which it relates as stated above. But in the case of a settlement not arrived at in the course of the conciliation proceeding it has to be in writing and signed by the parties in the prescribed manner and a copy thereof should be sent to the officer authorised by the appropriate Government in this behalf and to the Conciliation Officer. Such a settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceedings is binding only on the parties to the agreement as provided in Section 18(1) of the Industrial Disputes Act, 1947. Such a settlement is not binding on the other workmen who are not parties to the settlement"

In that case there was a settlement between the Paper Mill and its employees in the course of conciliation proceedings (the first settlement) which conferred certain benefits by way of incentives. While so, the Government of India reduced the rate of incentive benefits payable to the employees. The order of the Government of India reducing the rate of incentives was held to be illegal by the Central Government Industrial Tribunal-cum-Labour Court. Thereafter another settlement (the second settlement) was entered into between one of the Trade Unions SS. P.M. Employees Union (for short "the Union") and the Paper Mill, agreeing reduction in rate of the incentives. The respondents therein (workmen) approached the Authority under Payment of Wages Act, Bhopal, claiming that the second settlement was not binding on them and that they were entitled to the incentive at rates mentioned in the first settlement. The Authority allowed the claim. The Paper Mill challenged the order of the Authority in appeal before the Industrial Court, Indore. The appeal was dismissed by the Industrial Court. The matter was then carried to the Supreme Court by the special leave. The Supreme Court held that the first settlement was binding on the Paper Mill and the workmen on the date when the second settlement was entered into by the Paper Mill and the Union and that there was no evidence to show that the workmen were the members of the Union which entered into the second settlement, as much the same was not binding on them.

17. A settlement arrived at during the course of conciliation proceedings under the 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 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) in case of employer, his heirs, successors or assign in respect of the establishment to which the dispute relates and (d) in the case 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 the

establishment or part. But if the settlement is arrived at between the employer and the workmen otherwise than in the course of conciliation proceedings with which we are concerned in this case, it shall be binding on the parties to the settlement. The phrase "Parties to the settlement" includes both the employer and an individual employee or the Union representing the employees. If the settlement is between an employee and the employer it would be binding on that particular employee and the employer; if it is between a recognised union of the employees and the employer, it will bind all the members of the union and the employer. That it would be binding on all the members of the union is necessary corollary of collective bargaining in the absence of allegation of mala fide or fraud. (see *Herbertsons Ltd. vs. Workmen*) (AIR) 1977 SC 322. Merely because an individual employee or some of the employees do not agree to the terms of the settlement entered into between a recognised Union and the employer, he/they cannot be permitted to contend that it is not binding on him/them. Therefore, the settlement dated March 28, 1985 is binding on the respondents-employees.

18. This takes us to the next question as to whether a settlement dispenses with the requirement of Section 25N of the Act. There is nothing either u/s 18 or any part of Chapter V-A or Chapter V-B to indicate that the settlement dispenses with the requirements of the provisions of those Chapters. But it is stated by Sri Srinivasa Murthy that in a case where the award was passed by the Labour Court but thereafter the parties, viz., the employer and the employee and their union, entered into a settlement, the Supreme Court held that the award need not be published. Therefore, the learned counsel submits that just as the publication of the award which is a requirement of Sec. 17 was held to be unnecessary after the settlement was entered into in *Sirsilk Ltd., v. Government of Andhra Pradesh* (1963-II-LLJ-647), so also the requirements of Sec. 25N or of any part of Chapter V-A or Chapter V-B need not be complied with in view of the settlement.

19. In that case after adjudicating the industrial dispute between the appellants and the workmen, the Tribunal sent its award to the Government of Andhra Pradesh for publication. But before the publication of the award u/s 17 of the Act, the parties to the dispute entered into a settlement and jointly wrote to the Government not to publish the award. The Government felt bound to publish the award in view of the mandatory provisions of Sec. 17 of the Act. The appellant then filed a writ petition under Article 226 of the Constitution in our High Court for a direction to the Government not to publish the award. Holding that when Sec. 17 enjoined upon the Government to publish the award, it was not open to the High Court to issue direction not to publish the award, the writ petition was dismissed. On appeal, the Supreme Court allowed the appeal and held :

"Though Section 17(1) is mandatory and the Government is bound to publish the award received it from an industrial tribunal, the situation arising in a case where the settlement between the parties has been arrived at after the award has been sent by the Tribunal to the Government but before its publication is of

exceptional nature and may lead to a conflict between a settlement u/s 18(1) and Section 18(3). In such a situation the only way to reconcile the two provisions is to withhold the publication of the award, as a binding settlement has already come into force in order to avoid possible conflict between a binding settlement u/s 18(1) and a binding award u/s 18(3). In such a situation the Government ought not to publish the award u/s 17(1) and in cases where Government is going to publish it, it can be directed not to publish the award in view of the binding settlement arrived at between the parties u/s 18(1) with respect to the very matters which were the subject-matter of adjudication under the award. This would in any way affect the mandatory nature of the provision in Section 17(1), for the Government would ordinarily have to publish the award but for the special situation arising in such cases".

In my view, the broad proposition that a settlement always supersedes the provisions of the Act cannot be supported either on principle or on authority. Much turns upon the type of the settlement. There may be cases wherein settlement puts an end to the disputes between the parties, as it ought to, making it unnecessary to take any further step as in *Sirsilk Ltd. v. Government of Andhra Pradesh* (supra) wherein the settlement rendered the award of the Tribunal infructuous and publication of the same unnecessary. But there may also be cases where the settlement otherwise than during the conciliation would settle the dispute partially or where the disputes may spring from the settlement itself, therefore, it cannot be said that once there is a settlement the disputes, if any, come to an end automatically or the parties are absolved of the obligation to comply with the provisions of the Act. The question whether settlement between the parties dispenses with the requirements of the provisions of the Act, has to be answered depending upon the nature of the dispute, the settlement arrived at between the parties and the terms thereof, its binding effect having regard to Section 18(1) of the Act and other relevant provisions of the Act, and this has to be done on the facts of each case.

20. In the instant case, the relevant clause in the settlement dated March 28, 1985 is Cl. 1.3. It will be appropriate to read the same here :

Cl. 1.3 : Bearing in mind the precarious situation in which the factory is passing through, the Union has requested the management to introduce a revised Voluntary Retirement Scheme (Separation Compensation Plan) and the Union made suggestions in this regard, The Union suggests that the strength of workmen will be reduced by 60 persons by keeping open the Voluntary Retirement Scheme for a period of two months and it is accordingly agreed by both the parties to keep the Voluntary Retirement Scheme open for a period of two months as per the scheme, to enable workmen to exercise their option. The Union further agrees that if sixty permanent workmen do not opt for the Voluntary Retirement in terms of the revised Voluntary Retirement Scheme, the strength to that extent shall be reduced by resorting to retrenchment of the junior-most workmen, in accordance with the Industrial Disputes Act, 1947 as

determined by the Management to the extent of sixty workmen or such number as may fall short of the required number of sixty workmen, and on the such retrenchment the concerned workmen shall be entitled only to Retrenchment Compensation as per provisions of the Industrial Disputes Act.

21. From a perusal of the clause in the settlement, extracted above, it is evident that what is agreed upon is that the strength of the workmen will be reduced to the extent of 60 persons by keeping open the Voluntary Retirement Scheme for a period of two months to enable the workmen to exercise their option and that if 60 permanent workmen do not opt for Voluntary Retirement Scheme in terms of the revised Voluntary Retirement Scheme, the strength to that extent shall be reduced by resorting to retrenchment of junior-most workmen as determined by the management to the extent of sixty workmen or such number as may fall short of the required number of sixty workmen. The said clause provides that the retrenchment must be in accordance with the Industrial Disputes Act and that on such retrenchment the concerned workmen shall be entitled only to the Retrenchment Compensation as per the provisions of the Act. Thus, the settlement between the Union and the petitioner is to retrench the employees in accordance with the provisions of the Act. Therefore, under the settlement what was bargained was that if the employees upto sixty are retrenched in case they do not opt under the revised Voluntary Retirement Scheme, the Union will not champion their cause. It is not term of the settlement that the provisions of the Act need not be complied with if the employer resorts to retrenchment of the employees. Therefore, compliance with Section 25N of the Act cannot be said to have been dispensed with under the settlement. Compliance of that conditions is necessary both under the settlement as well as under Sec. 25N(1)(b) of the Act. Admittedly, this condition has not been complied with. Therefore, having regard to the provisions of sub-section (7), the purported retrenchment of respondents 2 to 4 in violation of Sec. 25N has to be held to be illegal from the date notices of retrenchment were given to them and they shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to them. For the above reasons, I do not find any valid ground to warrant interference of this Court in the impugned award.

22. The writ petition, therefore, fails and it is accordingly dismissed, but in the circumstances of the case without costs.