(2008) 04 KAR CK 0020

In the Karnataka High Court

Case No : Writ Petition No''s. 41994 and 47252 of 2003

First Flight Couriers Limited — APPELLANT

Vs

Karnataka Couriers, Cargo and General Employees Union and Commissioner of Labour in Karnataka, Department of Labour
 Karnataka Couriers, Cargo and General Employees Union Vs First Flight Couriers Limited — RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:
Industrial Disputes Act, 1947 — Section 10 (i) (d)

Citation : (2009) 121 FLR 20 : (2009) 1 KarLJ 372

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : S.N. Murthy and Somashekar, in W.P. No. 41994/2003 and T.S. Anantharam, in W.P. No. 47252/2003, for the Appellant; T.S. Anantharam, for R1 and Jagdish Mundargi, GP for R2 in W.P. No. 41994/2003, S.N. Murthy and Somashekar, in W.P. No. 47252/2003, for the Respondent

Final Decision : Dismissed

Judgement

Subhash B. Adi, J.—W.P. No 41994/2003 is filed by the Management. W.P. No. 47252/2003 is Sled by the Union.

2. In both the writ petitions, the award dated 21.12,2002 in ID.No.29/1999 has been called in question.

The Union has questioned the award against the rejection of the claim and substitution of the settlement in place of the award.

The Management has questioned the award only in so far as extending the benefit, of settlement to the members of the Union without they subscribing their signature to the settlement.

3. An issue WHS referred by the Stage Government u/s 10(i)(d) of the Industrial Disputes Act, interalia ''as to whether the charter of demands submitted by the

Union are lawful''. During the pendency of the dispute, most of the members of the Union entered into a settlement in relation to charter of demands as per settlement dated 02.09,1999. The copy of the settlement is produced at Annexuere.

4. In view of the settlement between the Management and most of the members, the Industrial Tribunal framed a point for determination, ''as to whether the reference is maintainable in view of the settlement dated 02.09.1999'' and ''as to whether the Union has properly espoused the cause of the workmen''?

The Industrial Tribunal held that the dispute is maintainable. However on consideration of the evidence led on behalf of the Union as well as the Management, the Industrial Tribunal found that, the settlement is Fair and binding on the members of the Union, as the majority of the members of the Union have signed the settlement by accepting the settlement, the Industrial Tribunal passed as award interalia substituting the settlement dated 02.09.1999 and 17.11.2000 for the award.

5. Sri. T.S. Anantharam, learned Counsel appearing for the Union, submitted that, the Industrial Tribunal was not justified in accepting the settlement only on the ground that the majority of the members of the Union have signed the settlement without considering the fairness of the settlement and without considering as to whether the said settlement, is binding on all the members of the Union who were contesting the matter. In this regard, he relied on provisions of Section 18(1) of the I.D. Act, and submitted that, any settlement between the parties only binds those who have signed the settlement. He also submitted that the Industrial Tribunal was to consider as to whether, the financial position/status of the Company and the charter of demands made by the Union. In this regard, he relied on the written arguments filed before the Industrial Tribunal, in order to point out that the charter of demand, was for period from 1st April 1998 to 31st March 2001 and the financial position of the company for the period 1995-96, 1996-97 and 1997-98 was sound, In this regard, he pointed out that for 1995-96, the net profit was to the tune of Rs. 20,91,064,59 paise; for 1996-97 Rs. 51,91,100.10 paise and for 1997-96 Rs. 47,82,455.78 paise and submitted that, the financial position of the company being sound and had made profits for the past 3 years and further the status of the company is worth of Rs. 100 Crores. The charter of demands for increase of wages and other allowances was realisable. Though these materials were placed on record before the Industrial Tribunal, the Industrial Tribunal without referring to the same has accepted the settlement wherein the wage hike is made only to the tune of Rs. 400/- to Rs. 600/-. Rs. 400/- for the field staff, Rs. 600/- for the operational staff i.e., Rs. 200/- for the first years and Rs. 200 for the next year in so far as the field staff is concerned. Rs. 300/- for the fist year and Rs. 300/- for the next year for the operational assistants.

He relied on the evidence of MW-15, who is the Manager of the Company and pointed out that, the witness has admitted at Para 11 interalia stating that, the company has gained, profit during the accounting year 1995-96 for the Karnataka Region to the extent of Rs. 20,91,065/- and Rs. 50,91,100/- for the year 1996-97 and Rs. 47,82,455/- for 1997-98. He also submitted that, the financial position of the Management being sound, and when the company is capable of meeting the demands, the Industrial Tribunal without going into the financial position and status of the company and capacity to meet the demands, has concentrated only on the terms of settlement, signed by the workmen with the Management during the pendency of the dispute.

He farther submitted that, though the loss is shown for 1999-2000, the figures for 1999-2000 are not relevant for the purpose of considering the charter of demands. Relying on the written arguments, he further stated that, the figures of the Audit Report of Bangalore unit is produced before the Court. Further MO-15 is admitted and also marked, but the relevant figures on all India basis was not placed before the Industrial Tribunal. He submitted that, the relevant material for the purpose of determining as to whether the charter of demands made by the Union are justified or not has to be assessed on the basis of the profit and loss on all India basis and n?t on the Region or Unit basis.

6. As regards to the members who have signed the settlement, he submitted that, since the members of the Union were not paid increments for the long period and they were in distress and under the distress, most of the members have signed the settlement and it cannot be held as a fair settlement and further submitted that, even taking into account the figures as disclosed by the Management, the wage structure has to be increased. In this regard, he pointed out that the Union has lead the evidence before the Industrial Tribunal Some of the witnesses examined by the Management are the members of Union, who have signed the settlement and their evidence is referred by the Industrial. Tribunal In this regard, he submitted that these witnesses have signed the settlement, have made statement before the Industrial Tribunal and that their evidence is not relevant for the purpose of adjudication, as to the justification of the charter of demands made by the Union. He also submitted that merely because the settlement is signed by the majority of the members of the Union that does not bind the members who have not signed the settlement and the dispute between the Union and the Management did exist. The Industrial Tribunal is not justified in. substituting the settlement in place of the award considering the same as fair settlement.

7. Sri. S.N. Murthy, learned Senior Counsel appearing fear the Management submitted that., as pear Annexure - A produced along with writ petition filed by the Management, out of 135 members of the Union 125 members have signed the settlement and out of 112 members of the Union, 106 members have, signed the settlement. When a settlement is signed by the Management and the members of the Union, settlement u/s 18(1) of I.D. Act is deemed to be Fair and binding not only on signatories but also on other members of the Union. He

further submitted that, the charter of demands are considered on the basis of Region-Wise and not on all India basis. In this regard, he submitted that charter of demands are made by different Unions and at different places and the same were considered by the Management according to the needs and demands and the status of the company in the respective region. He submitted that in this case, only the Bangalore Unto has made charter of demands and in this regard, the figures relevant for the purpose of considering the fairness of the settlement are only from the Bangalore Unit and not the figures of the other unit. In this regard, he relied on judgments reported in 1964 (8) F.L.R. 12 (Workmen of Jeesop & Co. Ltd. v. Jeesop & Co. Ltd. and Ors.).

The learned Senior counsel further submitted that, the Apex Court while considering the norms for fixation of the wage structure, has held that "wages including wage scales, are fixed on region-cum-industry basis, and one of the reasons behind this, principle is that concerns of more or less of the same standing in the same industry should have as nearly as possible same wages so that they might stand on a. par with one another in the matter of competition".

By relying on this judgment, he submitted that, the parity of the wage structure has to be considered in the industrial concern not in region or on all India basis. In this regard, he further relied on the decision of the Apex Court reported in The Hindustan Times Ltd., New Delhi Vs. Their Workmen, (relevant page 112) and submitted that the "wage structure which would give the workmen generally a living wage economic considerations made that only a dream for the future. That it why the industrial tribunals in this country generally confine their horizon to the target of filing a lair wage. But there again, the economic factor have to be carefully considered. For these reasons, this Court has repeatedly emphasized the need of considering the problem on an industry-cum-region basis, and of giving careful consideration to the ability of the industry to pay".

Relying on tins decision, he further submitted that, on industry-cum-region basis, the wags structure it determined.

8. In so far as the binding nature of the settlement on the members of the Union who have not signed the settlement, he relied on the judgment reported in Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others,

9. Ralying to Paras 25 and 27, he submitted that, once cordiality is established between the employer and labour in arriving at a settlement which operates well for the period that is in force, there is always a likelihood of further advances in the shape of improved emoluments by voluntary settlement avoiding friction and unhealthy litigation. This is the quintessence of settlement which Courts and Tribunals should endeavour to encourage. It is in that spirit the settlement has to be judged and not by the yardstick adopted hi scrutinizing an award in adjudication. Evan if there is any objectionable part in the settlement and if the settlement is just, and fair and accepted by large majority of the workmen in a collective bargain impliedly it will not be interfered by the Tribunal. By placing

reliance on the said judgment, he further submitted that, if the Court comes to the conclusion that the settlement is just, fair and reasonable, even though the said settlement is not signed by few of the members of the Union, the Industrial Tribunal can accept the settlement and the members who have not signed are also bound by the said settlement.

10. He also relied on another judgment of the Division Bench of this Court reported in Mangalore Ganesh Beedi Works and Others Vs. Workmen and Allied Beedi Factories Workers Association, . Relying on Paras 26, 27, 28 and 29 he submitted that, this Court in identical circumstances interpreting a settlement accepted by Management and the workmen has observed that:

if the settlement has been arrived at by vast minority of workmen with their eyes wide open and was also accepted by them in its totality, it must be presumed to be fair and Just and not liable to be ignored merely because small number of workers were not parties to it or refused to accept if.

He also submitted that, in this case, none of the members of the Union who have signed the settlement have protested or raked any objections against the terms of the settlement, majority of the workmen haw not complained against the terms of the settlement He also submitted that the only question that was required to be considered was the fairness of the settlement In this regard, he also submitted that if more than majority of the workmen have accepted the settlement as fair, proper and reasonable, few members cannot raise objections and the Industrial Tribunal once it comes to the conclusion that the settlement is fair the Tribunal is required to accept the same and In this case, the Tribunal having accepted the settlement as fair ought to have directed the members of the Union, who had not signed the settlement to affix or subscribe their signature.

He also submitted that from the written arguments filed by the Union before the Industrial Tribunal, the figures pointed out by the learned Counsel for the petitioner only shows that particular year but overall, the profit is taken into account, the settlement m reasonable and he also submitted that subsequent to the period for which the charter of demands were made, there were two other settlements and those having been accepted by the Union. Supporting findings of the Industrial Tribunal, he further submitted that, the majority of the members of the Union have not raised any objections only few members who have objections against the settlement, cannot be construed the settlement as unfair and unjust. If the settlement is just and fair as is entered into in the larger interest of the Industry and Workmen, it should not be disturbed.

11. The only question that arises for considering in this writ petition is:

Whether the settlement signed by the majority of the Workmen of the Union is also binding on the members who have not signed the settlement) if the settlement is found to be lair and reasonable?

12. It is not in dispute that, the dispute is referred in regards to the charter of demands made by the Union for the period from 01.04.1998 to 31.03.2001 for period of 3 years. It has come on record that subsequent to the charter of demands, there were further charter of demands for the subsequent period and there was a settlement on 07.11.2001. It is submitted that, thereafter also there was one more settlement has been entered into between the Management and the Union. The dispute is only in regard to the demands for the year from 1998-99 to 2000-01. It is not in dispute that during the pendency of the dispute, the Management entered into a settlement for which, majority of the members of the Union signed the said settlement on 02.09.1999. Though the learned Counsel for the petitioner submitted that, most of the signatures are of the mechanical staff and other staff. However to substantiate the said contention, the Union has not placed any evidence before the Industrial Tribunal. In turn, the Management has adduced the evidence of the workmen and the said workmen have admitted the fairness of the said settlement. In support of the contention, of the Union, written arguments has been fifed before the Industrial Tribunal. Even according to the contentions raised by the Union, the profit shown for the relevant 3 years is taken into account. I do not find the demand made for increase in the wages for the said period is justifiable. For the subsequent period there are two settlements and both these settlements are accepted by the numbers of the Union, if that is considered the charter of demands for 1998 to 2001, does not appear to be reasonable. If those two settlements are considered together, they will not make any increase of wages to the extent demanded in the charter of demands for the year 1998-2001. Apart from this, the Management has filed the statement of accounts showing the profit and loss for the year 1998-2001. The Management has suffered loss during 1997, 2000, 2002 and 2005. Though these figures may not relevant while considering the charter of demands for the relevant period, however, if the demands are to be met during 1999 and in 1999, Company had suffered net loss of Rs. 44,85,000/-, which cannot be ignored. At the same time, as the Company has to Increase its wages based on the financial position, if those figures are taken into account, the figures given by the Union, they by themselves will not justify the charter of demand for Rs. 2000/- increase in wages. The company has increased Rs. 400/- and Res. 600/- respectively in the first settlement and in the second settlement, Rs. 775/- and Rs. 1100/-. It only shows irrespective of the profit and loss during the relevant period, the Company has increase the wage structure of the members of the Union gradually from stage to stage. There is drastic increase In the wage structure for 1998-1999, 2000-01 and. thereafter.

13. It is not in. dispute that, the relevant figures for the recent years are taken for giving the increase in the wage structure. The Apex Court in the matter of the workmen of JEESOP & Co., LTD. and Ors, has observed that:

It is well settled that wages including wage scales are fixed on region-cum-industry basis, and one of the reasons behind this principle is that, concerns of more or less of the same standing in the same industry should have as nearly as possible same wages so that they might stand an a par with one another in the matter of competition.

14. This shows that in order to give equality amongst the workmen in the same region, the wage structure has to be increased and it has to be based on region wise and not on any other basis. This view Is also supported by the decision reported in The Hindustan Times Ltd., New Delhi Vs. Their Workmen, where the Apex Court considering the relevant figures has observed at page 112 that:

While the industrial adjudication will be happy to fix a wage-structure which would give the workmen generally a living wage economic considerations made that only a dream for the future. That is why the industrial tribunals in this country generally confine their horizon to the target affixing a fair wage. But them again, the economic factors have to be carefully considered. For these reasons, this Court has repeatedly emphasized the need of considering the problem on an industry-cum-region basis, and of giving careful consideration to the ability of the industry to pay.

From the observation of the Apex Court, it is clear that, the economic condition of the Industry to pay the wages is one of the facts required to be considered and it should toe on the basis of the industry-cum-region basis. Considering the validity of the charter of demands and the figures disclosed by the Management as regards to the Bangalore Unit is concerned, appropriately these figures tally with the wage structure of the workmen as regards to the fairness of the settlement. The Apex Court in identical circumstances in a judgment reported in Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others, has observed at Para 15 that:

We are not prepared to accept the position, as urged by the second, respondent, that even if the settlement is finding on the patties executing the document, namely, the company and the third respondent, representing a large majority of the workmen, since the same is not binding on the members of the Mumbai Mazdhor Sabha Union, howsoever small the number, wider Section 18(1) of the Industrial Disputes Act, the appeal should he heard on merits. On the other hand, we take the view that after hearing the parties this Court was satisfied when it had called for a finding of the tribunal that if the settlement was fair and just, it would allow the parties to be governed by the settlement substituting the award.

The Apex Court ill the same judgment at Para 21 has observed as under:

The settlement has to be taken as a package deal and when labour has gained in the matter of wages and if them is some reduction in the matter of defames allowance so far as the award is concerned, it cannot be said that the settlement as a whole is unfair and unjust.

It has also observed at Para 25 that:

There may be severed factors that may influence parties to come to a settlement as a phased endeavour in the course of collective bargaining. Once cordiality is established between the employer and labour in arriving at a settlement which operates well fir the period that is in force, there is always a likehood of further advances in the shape of improved emoluments by voluntary settlement avoiding function and unhealthy litigation. This is the quintessence of settlement which Courts and Tribunals should endeavour to encourage. It is in that spirit the settlement has to be judged and not by the yardstick adopted in scrutinising an award in adjudication. The Tribunal fell into an error in invoking the principles that should govern in adjudicating a dispute regarding defames allowance in judging whether the settlement was just and fair.

15. While considering the settlement, the Apex Court has considered if there is any litigation regarding dearness allowance in judging whether the settlement was just and fair. The fairness of the settlement, the terms of the settlement has to be just and not by confrontation by an adjudication of the dispute. Cordiality between the Management and the Labour is the paramount consideration for the health industry. The Apex Court has accepted the settlement arrived at by the Management and the members of the Union, even though few members of the Union have not signed the settlement. The Apex Court has considered the settlement as fair, just and reasonable. Considering the decision of the Apex Court and also considering the matter on merits, the gradual increase and the majority i.e., substantial members of the Union having accepted the settlement, except few members of the Union disputing the same, I do not find there is any justification in their demand. Union always represents its members and if it represents the members and. if the majority of members accept the settlement as fair, just and reasonable, how it can become unfair at the instance of only few members. I do not find the Tribunal has committed any error in accepting the settlement arrived at between the Management and the Union and substituting the settlement in place of the award. If the settlement is fair, just and reasonable in the interest of the Management and the Labour. In my opinion, the Court should not interfere with the same, which would otherwise will affect the cordial relation between the Labour and the Management.

16. In so far as the contention of the Management that, the settlement would be binding on the members of the Union and are required to sign the settlement to avail the benefit, there is no justification in this contention. Once the settlement is signed by the majority of the Union members and once if it is upheld, it is binding both the Management and all the Union members and even those who have not signed, and it is deemed to have signed and accepted the settlement. In such circumstances, I do not find that few members who have not signed the settlement are required to sign the settlement.

17. Accordingly, the Writ Petition No. 41994/2003 filed by the Management and the Writ Petition No. 47252/2003 filed by the Union fail and are dismissed.

