

(1969) 03 BOM CK 0013

In the Bombay High Court

Case No : Spl. Civil Application No. 1325 of 1968

Garment Cleaning Works

APPELLANT

Vs

D.M. Aney and Another

RESPONDENT

Date of Decision : 03-03-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3
Industrial Disputes Act, 1947 — Section 10A(3A), 17A, 18(1), 18(2), 18(3)

Citation : AIR 1970 Bom 209 : (1969) 71 BOMLR 843 : (1971) 21 FLR 283 :
(1970) ILR (Bom) 722 : (1970) 2 LLJ 195 : (1970) MhLj 318

Hon'ble Judges : Patel, J;Madan, J

Bench : Division Bench

Advocate : M.V. Bhatt and H.H. Madon, for the Appellant; D.S. Nargolkar and J.G. Gadkari, for the Respondent

Judgement

Patel, J.—By this petition the petitioner seeks to challenge the decision of the Industrial Tribunal given on a preliminary objection in an industrial reference. The short facts leading to this reference are as follows:

2. The petitioner is doing laundry business in partnership. It employs about eight hundred workers in different departments and different branches. An industrial dispute was raised by a section of the workers regarding the scales of pay, classification, dearness allowance etc. and the said dispute was referred to the Industrial Tribunal in reference (IT) No. 195 of 1962. A similar dispute was raised by other section of the workers of the said firm and it was referred to the Tribunal in reference (IT) No. 12 of 1963. At this time the Union which took up the cause of the workers was the Laundry Mazdoor Sabha. Thereafter, another Union sprang up called the Bombay General Employees Association. This Association made applications for making it a party to the References. Accordingly, this Association also was made a party to the said References. The usual procedure in the reference was followed. No other worker or Union appeared during the conduct of the References. Thereafter settlements were arrived at in both the References between the petitioner and the Unions. The

settlements were signed by the employer and the representative of each of the Unions in each of the References. They also appear to have been signed by the counsel for the workmen as shown by the annexures to the present petition. By these settlements all matters which were then pending before the Tribunal including some others were settled. The settlements were filed on October 22, 1964. The Tribunal after stating the demands etc. made the following order by paragraph 4 of its award dated November 2, 1964 in reference No. 105 of 1962:

"In the result I make an award in terms of the settlement marked as Annexure "P", so far as it relates to the subject matter of the Reference." Similarly, in the other reference after reciting the demands the Tribunal says:

"At the stage of the hearing there has been a settlement between the parties and accordingly they have submitted an agreement. I accept the same. "

In the result I make an award in terms of the agreement marked as Annexure "K".

To both these awards the agreements were annexed as required by law. The awards and the annexures were then forwarded to the State Government.

3. The present Union, respondent No. 2, which came on the scene later, by its notices terminated the first award on February 14, 1966 and the second award on May 22, 1966. Thereafter, it submitted fresh demands on October 5, 1966. These demands related to dearness allowance and increase in piece rate payment with retrospective effect. This dispute was referred to the Industrial Tribunal by reference (IT) No. 306 of 1967.

4. The petitioner raised a preliminary objection that the settlements entered into between the parties and which became the subject-matter of the awards are binding for the periods stated in the settlements and they cannot be reopened under the Industrial Disputes Act, 1947, Thy Tribunal decided this contention as a preliminary objection and answered it against the petitioner on the ground that an award binds the parties only for a year. The petitioner now comes to this Court.

5. The relevant sections in this connection of the Industrial Disputes Act 1947 (hereinafter referred to as the Act) are as below:

"2 (p):-- "Settlement" means 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 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.

18(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement."

Sub-section (2) of Section 18 refers to the binding nature of an arbitration award. Sub-section (3) reads as follows:

"A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under Subsection (3A) of Section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable 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) Where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

. (d) where a party referred to in clause (a) or clause (b) is composed 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 that establishment or part." Section 19 of the said Act reads as follows:

"(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute,

(2). Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for 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 pat to the other party or parties to the settlement.

(3) An award shall, subject to the provisions of this section, remain in operation for the period of one year from the date on which the award becomes enforceable u/s 17A;

xx xx xx". It is argued by Mr. Shetye, for the petitioner, that having regard to the provisions of Section 19 of the Act the settlements between the Unions and the petitioner which ultimately became the subject-matter of awards are binding for the period provided therein and that a refer reference made during the period of these settlements is bad and void.

6. Reliance is firstly placed on Section 19 of the Act. In the present case, it is said that inasmuch as in the two References which formed the subject-matter of the settlements all the workers were parties and as the settlements were arrived at between the Unions representing all the workers, the same are binding not

only on the workers employed at present but also those who came subsequently on the scene. Section 19(3) which contemplates operation of an award for a period of one year is made subject to the provisions of that section and one of those provisions is Sub-section (2) of Section 19 which says that a settlement is binding for such period as is agreed upon by the parties. It is clear that an award is normally effective and will continue to be in operation for a period of one year, unless its operation is extended by the Government under the second proviso to Sub-section (3) of Section 19. Settlement as, such stands on a different footing and operates for the period agreed upon between the parties, and it is common sense to suggest that that should be so even if there is an award in terms thereof.

7. It was contended before the Tribunal and also before us by Mr. Nargolkar, for respondent No. 2, that inasmuch as the settlements became awards of the Tribunals, the settlements merged, in the awards and the awards could operate only for one year and, therefore, the workers were entitled to terminate the said awards on the respective dates on which they did so. This argument overlooks the fact that Section 19(2) provides for the operation of settlements between the parties. Section 19(3) is subject to Sub-section (2) as much as to the second proviso thereto, which gives power to the Government to extend the operation of an award. Merely because a settlement is arrived at after an Industrial dispute is referred to the Tribunal it does not and cannot cease to be a settlement. Even though a dispute is referred to the Industrial Tribunal, the Tribunal cannot refuse to accept the settlement made by the parties. There is no provision in the Act of 1947 which gives power to the Industrial Tribunal to veto the settlement arrived at between the parties not even similar to one under Order 23, Rule 3 of CPC in respect of compromises. An award based on a settlement must, therefore, operate as provided by Sub-section (2) of Section 19 of the Act.

8. It cannot be urged and has not been urged that a settlement arrived at in the course of conciliation proceedings would not be binding on the parties and all workmen. This is obvious from Sections 18(1), 18(3)(d) and 19 of the Act. Is there then any difference between conciliation proceedings and the proceedings before the Tribunal? We do not see any. The purpose of the Industrial Law is to ensure fair deal to the workers and keep industrial peace and thus achieve national production. Can this be achieved by permitting one Union displacing another by extravagant promises and creating disputes and disturb long-term arrangements? If that cannot be done in respect of settlements during conciliation proceedings we do not see how it could be permitted in the case of a settlement when the dispute is before the Tribunal.

9. Before the Tribunal a decision of this Court in *Ghatge and Patil Co. Employees' Union v. K. R. Powar* 1966 (1) Lab LJ 250 was cited to support the contention that whenever a settlement is filed before the Tribunal, the Tribunal must consider the propriety thereof and thereafter deal with the matter. The above decision does not support this contention in that case in a pending reference the

mills produced agreements signed by one hundred and four out of one hundred and twenty four employees and asked for an award in terms thereof. The Union representing the workers objected to the award being made in terms of the agreements and contended that the agreements were contrary to the principle of collective bargaining and were brought about by fraud, misrepresentation and coercion. The Tribunal went into this question and decided that the contentions of the Union were not justified. As however all the workers had not signed the agreements nor had the Union, the Tribunal went into each of the items of the settlement between the parties and accepted the settlement as being fair and just except in regard to two matters viz. privileged leave and bonus. Thereafter, it made its own award though substantially in agreement with the settlement filed by the mills. One of the terms of the settlement was that the award should be effective and operative until July 31, 1967. The Court held that as the award was not a consent award, Sub-section (3) of Section 19 of the Act applied to it and the Tribunal had no power to make it effective and operative as provided in the settlement. The Court did not decide the question as to whether a settlement is possible during the pendency of an industrial dispute, and whether an award by consent can be passed.

10. Even on first principle, apart from anything else we do not see why a settlement cannot be arrived at between the employer and the employees in a pending industrial dispute. The Tribunal has to decide the matter on such avid reference as is brought before it. If the representatives of the workers come and say that the payments now made are fully justified and they do not want any increase, it is difficult to understand why the Tribunal in spite of this must go reducing or increasing the amount. There being nothing in the rules or the statute prescribed by the Government to enable the Tribunal to refuse to accept the settlement such a power of refusal cannot be implied. In our view, therefore, the settlement is operative and must have its full effect as required by Section 19(2) of the Act.

11. It was then contended that the agreements between the parties which have been filed in the proceedings did not satisfy the conditions of a settlement as defined by Section 2(p) of the Act which reads as follows:

"(p) "settlement" means 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 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."

In this connection, we must state as already stated earlier that these settlements have been signed both on behalf of the Laundry Mazdoor Sabha and the Bombay General Employees' Association, Bombay and also by the Advocate for the Workmen. Similar is the case with the other settlement. The petitioner in paragraph 5 of its petition clearly indicated that the settlements arrived at

between the parties filed before the Tribunal in the two References do not cease to be settlements within the meaning of Section 2(p) of the Act. In the counter affidavit filed on behalf of respondent No. 2 no allegation was made that these agreements did not amount to settlements as the requirements were not satisfied. It is required that the parties must sign the agreements in such manner as may be prescribed. It is further required that a copy should be sent to an officer authorised in that behalf by the appropriate Government and the conciliation officer. The whole purpose of this provision is that it should be known to every person and also to the concerned officers whose duty it is to administer the law. The purpose is fulfilled when the agreements are filed before the Tribunal which not only endorses them but sends them along with its awards. There is also no reason to suppose that proper persons required to sign those agreements had not signed them, for the reasons firstly that, no contention has been taken to this effect and secondly, the parties were represented by the Advocates and they would normally see that the agreements were completed as required by law. The same would necessarily apply to their being sent to the proper officers. In the present case, since settlement has taken place during the pendency of the References, the agreements were filed before the Tribunal. The second condition also is substantially complied with.

12. In this connection, we must observe that the agreements were arrived at as an overall arrangement between the parties for a period of five years on several matters some of which were outside the references. The workers obtained benefits for about two years under the agreements in the nature of increased remuneration. If the agreements were to be effective only for an year as is the case under the provisions of Section 19 of the Act, it is hardly possible that the employer would have agreed to the terms as contained in those agreements. On this ground i.e. estoppel, also it is impossible to sustain the contention that the respondent No. 2 was entitled to terminate those, agreements and settlements,

13. We, therefore, allow the petition and hold that the agreements are binding between the parties and the References were wholly uncalled for and void. We therefore quash the proceedings. In the circumstances of the case, we do not think that we should award costs to the petitioner. The rule is made absolute. Parties to bear their own costs.

14. Petition allowed.