

**(2003) 08 BOM CK 0064**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 577 of 2001**

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| Goodlas Nerolac Paints Ltd. | Vs | APPELLANT  |
| Paints Employees Union      |    | RESPONDENT |

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**Date of Decision :** 22-08-2003

**Acts Referred:**

**Citation :** (2004) 4 BomCR 355 : (2004) 101 FLR 486

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

**Bench :** Single Bench

**Advocate :** Sanjay P. Dhulopkar, for the Appellant; Susheel Mahadeshwar, for the Respondent

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## Judgement

R.M.S. Khandeparkar, J.—Heard learned Advocates for the parties. Perused the records. The petitioners challenge the judgment and order dated 30.1.2001 passed by the Industrial Court, Mumbai, in Complaint (ULP) No. 68 of 1990. By the impugned judgment and order the Industrial Court has declared the petitioners-company having committed unfair labour practice under item No. 1(c) and 2(b) of Schedule II and items 5 and 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act 1961, hereinafter called as "the said Act" and has directed the Petitioners-company to pay to the concerned members of the complainant-union the amount as per the settlement dated 22.8.1989 by deducting Rs. 2000/- for factory workers and Rs. 1750/- for staff members. The impugned judgment and order is sought to be challenged on three grounds, viz. that the members of respondent-union had not accepted the terms of the settlement dated 22.8.1979 and therefore, cannot claim benefit under the said settlement, secondly that the members of respondent-union having not given increased productivity in terms of the said settlement, they are not entitled to claim the benefit under the said settlement and thirdly there was bonafide dispute about applicability of the terms of the said settlement to the members of respondent-union and therefore the petitioner cannot be held guilty of adopting any unfair labour practice vis-a-vis members of respondent-union.

2. Few facts relevant for decision are that sometime in 1987, there was lockout declared by the petitioner-company and thereafter a settlement was arrived at between the petitioner-company, wherein respondent-union was represented by one Shri Vijay Kamble and others. The said Shri Vijay Kamble was then the president of the said union. In terms of the said settlement, lockout was lifted. However, the said action was challenged by the respondent-union contending that Shri Vijay Kamble had no authority to represent the respondent-union and legitimate officer bearers were Mr. Limaye and Mr. Walawalkar. The contention of the respondent-union was upheld in the complaint No. 648 of 1987 and thereafter an agreement was arrived at between the petitioner and respondent-union on 9.8.1989, which was, however, followed by another agreement dated 22.8.1989 between the petitioner-company and another union by name Shramik Utkarsha Sabha under the presidentship of said Shri Vijay Kamble, a copy of which agreement is found on record at Exh.U-23. Meanwhile, the demands raised on behalf of the workers by the members of respondent-union were referred to the Industrial Tribunal under Reference No. (II)52/89 as also (II)4/87. It is also to be noted that in terms of the agreement which was entered into between the petitioner-company and the union represented by Shri Vijay Kamble on 18.6.1987, the lockout was lifted subject to signing of settlement by all the workmen which settlement was held to be not binding upon the workmen in the complaint No. 648 of 1987. Further by orders dated 27.7.1987 and 17.8.1987 passed by the Industrial Court, Mumbai, the Petitioner-company was directed to allow all the workers to report on duty without being compelled to sign the said settlement dated 18.6.1987. While contending that there has been discrimination practised in relation to the members of respondent-union in the matter of payment of wages and service benefits consequent to the agreement dated 22.8.1989 entered into between the petitioner-company and the said Shramik Utkarsha Sabha represented by Shir Vijay Kamble and on that count unfair labour practice adopted by the petitioner-company vis-a-vis the members of respondent-union, a complaint came to be filed in the Industrial Court under the Said Act in January 1990. The same was contested denying the claim of respondent-union examined Mr. Achyut Karhadkar, and Tukaram Walawalkar in support of the complaint, the petitioner-company examined Sudhir Potdar, Gangdhar Talshilkar and Sham Bhobe in support of their defence. After analysing all the materials on record, the Industrial Court allowed the complaint as stated above.

3. While challenging the impugned judgment and order, the learned Advocate appearing for the petitioner submitted that the findings arrived at by the Industrial Court regarding absence of prior discussion with the respondent-union regarding the terms of settlement dated 22.8.1989, and failure on the part of the company to give offer to respondent-union and its members to avail the benefits of the said settlement as well as regarding the issue pertaining to the increase in productivity by the members of the union who were parties to the agreement dated 22.8.1989 are perverse inasmuch as that they are contrary to the

materials on record. In that regard attention was drawn to the testimony of the witnesses recorded before the Industrial Court. It was strenuously argued by the learned Advocate for the petitioner that the contents of the settlement were not only well known to the members of the respondent-union, but a copy of the agreement dated 22.8.1989 was displayed on the notice board inviting them to avail the benefit of the said agreement and they had chosen not to do so and therefore, they cannot without complying with the conditions attached to the said agreement could have sought to complain of not being view the benefit thereunder to them. he further submitted that the chart produced by the petitioner-company along with the written statement discloses the increase in productivity as a result of the service rendered by the members who were parties to the settlement dated 22.8.1989 as against failure in that regard by the members of the respondent-union and that also justifies refusal of benefits under the said agreement to the members of respondent-union. Drawing attention to Schedule II & IV of the said Act and particularly Item 1(c) and 2(b) of the II Schedule, the learned Advocate submitted that neither there was any activity of the union at formation nor there was any partiality or favouritism practiced by the petitioner-company, so as to hold the petitioner-company being guilty of unfair labour practice under the said items, nor the respondent-union had disclosed any breach of any agreement or settlement as such, so as to accuse the petitioner-company of having adopted unfair labour practice under item 5 of Schedule IV. He further submitted that there was bonafide dispute as regards the entitlement of the members of respondent-union to claim benefit under the agreement and therefore, there was no occasion for accusing petitioner-company of having adopted unfair labour practice under item 9 of Schedule IV of the Act. Reliance is sought to be placed in the decision in the matter of *Tata Press Ltd. v. Tata Press Employees" Union and Ors.* reported in 1994 2 CLR 204; *Banshilal Chandel and Ors. v. Union Bank of India*, reported in 1997 2 CLR 409, and *Balmere Lawrie & Co.Ltd. v. S.M. Limaye and Anr.*, reported in 1992 Lab.I.C. 205, in support of the contention on behalf of the petitioner-company. It was strenuously argued by the learned Advocate for the petitioner that the members of the respondent who were fully aware of the terms of settlement dated 22.8.1989, cannot insist for benefit under the said agreement being made available to them unless they comply with the pre-conditions in order to avail those benefits in terms of the said settlement.

4. On the other hand the learned Advocate appearing for the respondent-union has submitted that the findings arrived at by the Industrial Court are based on assessment of evidence and there are no findings purely on the point of law. Being so in the absence of same being disclosed either as perverse or contrary to the material on record, there can be no occasion for seeking interference in writ jurisdiction. What is necessary to be seen is whether at the relevant time there was challenge to the union organisation and its activities which was prejudicial to the interest of the union or its organisation. he further submitted that the contention regarding need of increase in productivity being a pre-condition to

claim benefit under the said settlement is devoid of substance inasmuch as that finding arrived at by the Industrial Court based on assessment of evidence discloses that production activity in the petitioner-company is a chain process and this is also revealed from the testimony of the witnesses of the petitioner-company itself, viz. Sudhir Potdar as well as Sham Bhohe. According to the learned Advocate for the respondent-union, there is no case made out for interference in the impugned judgment and order.

5. The Industrial Court on analysis of the evidence and material on record has held that the contention of the petitioner-company that the benefit under the settlement dated 22.8.1989 were offered to the members of the respondent-union is not correct and the material on record reveal that the contentions in that regard sought to be raised by the petitioner-company are not correct. Attention was sought to be drawn to the testimony of Gangadhar Talshilkar as well as Sham Bhohe wherein the former had stated that the representatives of respondent-union were show production norms agreed upon and they were asked whether they were also ready to give the said production norms and they had flatly refused. He has further stated that in the month of August 1989 discussions were going on with respondent-union about increase in productivity in view of the earlier lock out in the company. As regards the statement of Gangadhar it apparently discloses that his claim regarding discussion with respondent-union was subsequent to the agreement dated 22.8.1989, otherwise he would have no occasion to say that "production norms agreed upon by Shramik Utkarsha Sabha" while stating that those were shown to respondent-union. Besides the witness has no where deposed as to when such meeting with the respondent-union was held wherein he had occasion to participate and to show production norms to the members of respondent-union. Grievance was sought to be made that the said witness was not cross-examined on the said statement. It is always to be remembered that when the burden lies upon the party to prove a particular fact, an incomplete information given by such a party cannot come in aid to his benefit even in the absence of any cross examination on any such incomplete information furnished by the said party. It is only when convincing and cogent evidence is produced by the party on whom burden lies, the onus shifts to the otherside to disprove the said evidence. In the absence of cogent evidence being brought on record, there can be no occasion for shifting of onus on the other side and therefore, merely because there was no cross-examination on the said statement, which was as vague as it could have been, no fault could be found for the absence of cross-examination on that count. As regards the testimony of Sham Bhohe, the same merely reveals that there was some discussion with the respondent-union in August 1989 about production and increase in productivity but that itself would not amount to arrive at a settlement or to give the respondent-union a clear idea about agreement which was yet to be executed with Shramik Utkarsha Sabha on 22.8.1989. Here again it was the case of the petitioners-company that the respondent-union and its members were made aware of the terms of the agreement dated 22.8.1989. It was

therefore necessary for petitioners-company to lead necessary evidence in that regard to establish the said fact. Neither testimony of Gangadhar-Talshilkar nor that of Sham Bhohe establish the case put forth by the petitioner-company. It is also pertinent to note that the statement regarding discussion relating to the increase in productivity in August 1989 is to be found in the testimony of all the three witnesses of the petitioner-company. However, none of them have revealed that the said discussion had anything to do with the settlement or the terms of the settlement dated 22.8.1989. The testimonies of these witnesses as rightly observed by the Industrial Court, rather than supporting the contention of the petitioner-company, disclose that the petitioner-company had not made any efforts at any point of time to give even a fair opportunity to the respondent-union to avail the benefits of the terms of the said agreement, nor were they made aware that the benefits available to the members of the Shramik Utkarsha Sabha are directly linked to the production activity and would be available to those workmen who satisfy the terms relating to the increase in production.

6. The learned Advocate for the petitioners drawing attention to Clause 7 of the agreement dated 22.8.1989 tried to contend that the same was a sufficient notice to the member of the respondent-union to avail the benefit of the agreement subject to the condition stipulated in the agreement. Cause 7 of the said agreement reads thus:

"7. That it is clearly understood that the benefits of this settlement are extended only to those workmen and staff whose names are annexed to this settlement. However, it is provided that should any other workman/ staff show his willingness to give production and efficiency as per clause No. 1 and 2 of this settlement the company shall give to him the interim productivity allowance prospectively on the same basis and the same conditions as per stipulated in Clause No. 3 of this settlement. Such workman and staff will be made parties to this settlement."

It is to be noted that the typed copy of the settlement which is placed on record as Exh.A runs in as many as 30 pages and annexure II comprises of two columns. The first column refers to the production, filtration, drying/general work, pulverising, blending and filling, triple roll etc. which discloses various stages in the course of production activity and the second column relates to the agreed norms of production activities. Both these columns relate to various sizes of the machineries as well as products and various activities in the course of manufacturing process, and also refer to various technical terms and expressions. Undoubtedly the members of the Respondent-union include skilled and unskilled labourers, persons employed in actual operation as well as staff members. It is also to be noted that the majority of the employees of the petitioner-company were the members of the respondent-union in comparison with the membership of Shramik Utkarsha Sabha. In the circumstances mere display of agreement on the notice board in the manner done by the petitioner-company does not disclose that the majority of the employee had an opportunity of negotiation before acceptance of the terms of settlement. On the contrary it

reveals that the agreement between the management and few workers was sought to be imposed upon the majority of the employees without knowing their views on the terms and conditions of the settlement. In such circumstances, it cannot be said that there was fair opportunity to the employees to accept or reject the terms of settlement even if they were displayed on the notice board. Viewed from this angle, no fault can be found with the findings arrived at by the industrial Court that the benefits of settlement were not made available to the members of the respondent-union in the manner as they required to be made available.

7. As regards the point of increase in productivity and the terms and conditions in that regard in the settlement, the petitioner-company, along with its written statement had filed a chart disclosing the alleged production given by the members of the two unions. Undoubtedly the chart does not reflect the production by all the workmen nor it is known as to what is the production effected by the other employees apart from those mentioned in the chart. Admittedly the person who has prepared the chart has not been examined before the Industrial Court nor details based on which the chart was prepared were either disclosed or placed before the Industrial Court. Such a chart can hardly be said to be cogent evidence in support of the contention regarding increase in production activity. Undoubtedly apart from the said chart there is no other material produced in that regard by the petitioner. As against this, the findings of the Industrial Court disclose that the production process is a continuous chain of process and it has been clearly stated by Sudhir Potdar, the witness examined on behalf of the petitioner-company that "there are number of compartments of production through which goods are passing during the manufacturing process", which apparently discloses that the finding arrived at by the Industrial Court is clearly borne out from the record. Added to this, it is an undisputed fact that till 1989 the employees were not getting any production incentive. It is also explained by Shri Gangadhar Talshilkar in his testimony that there are number of compartments of production through which the goods pass during manufacturing process and number of employees including the members of respondent-union participate in the said manufacturing process and they have been denied the benefits which are otherwise granted to the members of Shramik Utkarsha Sabha. As rightly submitted by the learned Advocate for the respondent, considering the background in which agreement dated 22.8.1989 appears to have been entered into, the same further lends support to the contention of the respondent-union that the petitioner-company had adopted a vindictive attitude towards members of the respondent-union.

8. The contention of the learned Advocate for the petitioner that there was bonafide dispute about the right of the members of respondent-union to claim the benefit under the settlement dated 22.8.1989 is also devoid of substance for more than one reason. Firstly neither such a defence was raised in the reply to the complaint by the respondent-union before the Industrial Court nor any ground in that regard was raised even in the memo of writ petition before this

Court. This submission has been made for the first time across the Bar. Apparently it is an after-thought on the part of the petitioners. Whether there was a bonafide dispute about entitlement to claim benefit under the settlement dated 22.8.1989 is not a pure question of law. There ought to have been the factual function laid down in that regard in order to enable the party to raise any such point and in the absence therefore, the party is not entitled to raise such a defence for the first time in the course of argument in the writ petition. Even otherwise, the materials on record nowhere disclose or even indicate that there was any such bonafide dispute about entitlement of the members of respondent-union to claim the benefit thereunder. As already observed above, there was no fair opportunity to the members of respondent-union to accept the terms and conditions of the said settlement and therefore, there was no occasion for the petitioner-company even to contend that there was any bonafide dispute about the entitlement of the members of respondent-union to claim benefit under the said settlement. In fact it is not a case of benefit under the settlement, but the complaint of the respondent-union was that certain benefits were given to a particular class of employees who were disclosed as the parties to the settlement dated 22.8.1999, whereas the said benefits were denied to the members of the respondent-unit and that therefore, there was unfair labour practice adopted by the petitioner-company vis-a-vis the members of the respondent-union. Considering the same, the findings arrived at by the Tribunal regarding unfair labour practice being adopted under item 1(c) and 2(b) of Schedule II as well as items 5 and 9 of Schedule IV cannot be found fault with. The contention sought to be raised in relation to the absence of case being made under item No. 1(c) or 2(b) of Schedule II as well as item 5 of Schedule IV are devoid of substance. However, the learned Advocate for the petitioner is justified in contending that there was no case made out to record a finding that the petitioner-company is engaged in unfair labour practice under item 9 of Scheduled IV of the Act. Apart from the said finding there is no case made out for interference in the impugned judgment and order.

9. As regards the decision of the Division Bench in the case of Tata Press Ltd., it was held therein that only 15 employees cannot dictate terms to the employer when all the remaining employees had signed the settlement. That was a case where the settlement was arrived at after protracted negotiations between the employer and the union representing majority of the employees. The said settlement was accepted by all the employees of the company and only 15 workers had chosen not to go with the other employees. Out of the 15 employees. 8 were dismissed from service and one had resigned, leaving only six employees not accepting the settlement. In the background of those facts, the Division Bench observed that handful of employees cannot dictate their terms to the employer when all the other employees had accepted the settlement. Apparently the observation was based on the facts of that particular case.

10. In Banshilal Chandel's case, Division Bench of the Allahabad High Court was dealing with a case in relation to the grievance of the employees of the bank

against the policy formulated by the bank pertaining to transfer of officers. In that connection it was observed that "There is no doubt about the legal position that after appointment, the promotees and the direct recruits from one integrated class and no discrimination can thereafter be made in favour of the recruits from one source as against the recruits from the other source. The recruits from both the sources are absorbed in one cadre and they from one class and they cannot be discriminated." Admittedly the observations were in totally different set of facts and in no way related to the circumstances which can be similar to those in the case in hand and therefore, it is of no help in the case in hand.

11. Balmer Lawrie & Co.'s case, the learned Single Judge of this Court observed that where a party bona fide puts forward his interpretation of the settlement between the management and the labour union, not as an excuse for avoiding his obligation under the settlement and a serious controversy arises between the parties on the interpretation, but the party is ready and willing to abide by any interpretation of a competent Court or authority, it cannot be said that such a party "failed" to implement the settlement within the meaning of the said expression appearing in Item 9 of Schedule IV of the said Act. Apart from the fact that there was no bonafide dispute of any interpretation of any clause of the settlement in the case in hand, as already held above, there was no case made out for holding the petitioner-company to be guilty of violation of any settlement as such and therefore, finding of the Industrial Court in relation to the adoption of unfair labour practice under Item 9 of Schedule IV being set aside, the decision in any case is of no help to the petitioner in the case in hand.

12. For the reasons stated above, therefore, there is no case made out for interference in the impugned judgment and order, except the finding regarding adoption of unfair labour practice under Item 9 of Schedule IV of the said Act. The impugned judgment and order to that extent stands modified, that is to say that the finding of indulging in unfair labour practice under Item 9 of Scheduled IV stands quashed and set aside. Except the said modification, the impugned judgment and order does not warrant any interference. Rule is made absolute accordingly with no order as to costs.

13. At this stage, the learned Advocate for the petitioner prays for continuation of interim stay for a period of six weeks. The same is objected to by the learned Advocate for the respondent. However, the order of interim stay should continue for a period of six weeks.