

(2009) 01 BOM CK 0018

In the Bombay High Court

Case No : O.O.C.J.A. No. 1079 of 2003 in Writ Petition No. 577 of 2001

Goodlass Nerolac Paints Ltd.

APPELLANT

Vs

Paints Employees' Union

RESPONDENT

Date of Decision : 21-01-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(1), 18(3)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30

Citation : (2009) 3 LLJ 703

Hon'ble Judges : D.K. Deshmukh, J; A.A. Sayed, J

Bench : Division Bench

Advocate : C.U. Singh, R.N. Shah, Sanjay Udeshi, instructed by Sanjay Udeshi and Co, for the Appellant; Susheel Mhadeshwar, for the Respondent

Judgement

1. By this appeal the appellant challenges the order dated August 22, 2003 passed by the learned single Judge of this Court in Writ Petition No. 577/2001. That writ petition was filed by the present appellant challenging the order dated January 30, 2001 passed by the Industrial Court, Mumbai in Complaint (ULP) No. 68/1990. By the order that was impugned before the learned single Judge, it was declared by the Industrial Court that the appellant-company has committed unfair labour practice under Items 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 1971 and has directed the appellant company to pay to the concerned members of the complainant-union, the amount as per settlement dated August 22, 1989 by deducting Rs. 2000/- for factory workers and Rs. 1750/- for staff members.

2. The facts that are relevant and material for deciding this appeal are that some time in the year 1987 there was a lockout declared by the appellant-company and thereafter settlement was arrived at between the appellant company and the complainant-union. It appears that at the same time one Mr. Vijay Kamble was the president of the complainant union. In pursuance of that settlement the lockout was lifted. That settlement was challenged on the ground that Mr. Vijay

Kamble had no authority to represent the complainant union and that the legitimate office bearers were Mr. Limaye and Mr. Walawalkar. That contention was upheld by the competent Court. There was a settlement reached between the appellant and Shramik Utkarsha Sabha, of which Mr. Vijay Kamble was the president. After this settlement was reached the demands raised on behalf of the workers by the complainant union were referred to the Industrial Tribunal. An award has been made by the Industrial Tribunal and that award is in force from April 1, 1991. A complaint was filed by the complainant-union claiming that by entering into the settlement with Shramik Utkarsha Sabha the employer has committed unfair labour practice defined under Items I(c) and 2(b) of Schedule 2 and items 5 and 9 of Schedule 4 of the Act. In the complaint an order was also sought against the employer to pay, to such of the workmen who were not paid, the sum of Rs. 200 per month and one lump of Rs. 6000/- along with interest at the rate of 18% per annum. The parties led evidence both oral and documentary and the complaint was decided by the Industrial Court by order dated January 31, 2001, the Industrial Court recorded the finding that the employer has committed unfair labour practice under the items mentioned above and therefore directed that benefits of settlement dated August 22, 1989 should be extended to all the employees irrespective of whether they have signed the settlement or not. It is to be noted here that the controversy in the complaint related only to the period January 11, 1987 to April 1, 1991.

3. That award was challenged before the learned single Judge in Writ Petition No. 577/2001. The learned single Judge has rejected that petition by his order dated August 22, 2001. Therefore, the employer came in Appeal against the order made by the Industrial Court as also the learned single Judge.

4. The learned Counsel appearing for the Appellant submitted that the settlement dated August 22, 1989 though it was reached with one Union, Clause (7) of the settlement made it clear that any workman irrespective of his union membership can sign the settlement and be entitled to the benefits of the settlement. According to the learned Counsel, therefore, it cannot be said that the settlement was applicable to only one set of workers or it was available to the members of the Union which signed the settlement. The learned Counsel submits that there is no pleading in the complaint that the clause in the settlement about the workman signing the agreement giving undertaking to give particular level of productivity was mala fide or that it was introduced in the settlement to set a trap for the workers. The learned Counsel, therefore, submits that the Industrial Court could not have directed grant of benefits under that settlement, specially because it was the settlement without intervention of the Conciliation Officer. The learned Counsel further submits that the learned single Judge erred in holding that the settlement reached between the other Union and the employer was not made known to all the workers. The learned Counsel submits that admittedly a copy of the settlement was placed on the notice board and this is accepted method of making any settlement or information known to the workers in the factory. The learned Counsel submits that the finding recorded by the Industrial

Court that the Clause about productivity was included in the settlement mala fide is the finding recorded by the Industrial Court without there being any pleading to that effect. The learned Counsel relied on following judgments in support of his submission.

(i) R.N. Gosain Vs. Yashpal Dhir, ;

(ii) Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Ltd., ;

(iii) Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another, ;

(iv) Tata Consulting Engineers and Associates Staff Union Vs. Tata Consulting Engineers and Another, ;

5. The learned Counsel further submitted that in the complaint filed by the Union it was claimed that the members of the complainant-union were entitled to the benefits of 1989 settlement, because they were similarly placed and as that agreement is binding on the members of the complainant-union. But it is held that the agreement is not binding on the members of the complainant-union, and they are entitled to compensation because the employer has indulged in unfair labour practice. The learned Counsel submits that there is no question of settlement being binding on the workers who did not sign the settlement and if they were entitled to compensation there is neither any evidence led nor there is any discussion in the award as to what will be the amount of reasonable compensation.

6. The learned Counsel appearing for the complainant-union, on the other hand, submits that it was the case of the complainant union that the settlement was only a purported, settlement. In the submission of the learned Counsel, there, was no real settlement. It was only a device adopted to give benefits to the members of one union. In the submission of the learned Counsel because of this statement made in the complaint that it was the purported settlement, the learned Counsel appearing for the Appellant-employer is not justified in contending that the finding in relation to the productivity clause has been recorded without there being any pleading. The learned Counsel also relied on the provisions of Section 30 of the Act to contend that direction for making payment can be made, by the Industrial Court because it can direct the employer to take affirmative action.

7. Now, if in the light of these rival submissions the record of the case is perused, it becomes clear that the Industrial Court has directed extending the benefits of 1989 settlement to all the Workers without the workers signing the settlement. Perusal of the judgment of the Division Bench of this Court in the case of Tata Consulting Engineers and Associates Staff Union v. Tata Consulting Engineers and Anr. (supra), referred to above shows that when there is a settlement signed under Sub-section 1 of Section 18 of the Industrial Disputes Act, that settlement becomes applicable to the workers who sign the settlement

and accept the terms of the settlement. The Court has noted the distinction between a settlement reached because of intervention of the conciliation officer under Sub-section 3 of Section 18 of the Act and a settlement reached under Sub-section 1 of Section 18. The Division Bench has held that in order that the settlement under Sub-section 1 of Section 18 becomes applicable the terms of the settlement have to be accepted by the workers. Paragraphs 7 and 8 of the judgment, in our opinion, are relevant. They read as under:

Regarding the grievance that there is "unfair labour practice" by the company, the learned Counsel for respondent No. 1 is right in contending that both the classes of employees cannot be said to be similarly situated. Since the case does not fall under Sub-section (3) of Section 18 of the Act, but is covered by Sub-section (1), obviously, the benefits can be expended to those employees who had entered into settlement. Such settlement creates rights in favour of one party, and, that the same time, it creates obligations. If a person does not give an undertaking, which is a part and parcel of the voluntary settlement arrived at between the parties otherwise than in conciliation proceedings, he cannot claim benefits under the said settlement.

8. No doubt, it was contended that under Clause 6 of the settlement, the Company was required to take action, if such action not taken, it is open to the appellant to take appropriate proceedings in accordance with law. The fact, however, remains that the settlement which was arrived at between the parties, which has been relied upon by the Tribunal as well as by the learned single Judge, is a settlement under Sub-section (1) of Section 18 of the Act. Obviously, therefore, the employees covered by such settlement under Sub-section (1) of Section 18 is an independent class, and if certain benefits have been granted in favour of those employees, no complaint can be made by the members of the other union, and on that basis, no relief can be granted.

8. Now, so far as the question whether the settlement was actually a settlement or purported settlement is concerned, in our opinion, though the learned Counsel appearing for the complainant-union submitted that it was a purported settlement, what is found in paragraph 3(j)(vi) of the complaint shows that even according to the complainant because of the 1987 settlement there was a change in method of work which has been accepted and induced and given effect to by the appellant-employer. The 1989 settlement is a successor to 1987 settlement as per the pleadings in the above referred paragraph. What is further to be seen is after this settlement was signed it was placed on the notice board. It had Clause (7), which reads as under:

(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 workmen and staff will be made parties to this settlement.

9. It is clear from Clause (7) quoted above that any worker who accepts the settlement and signs it by agreeing to give productivity and efficiency is entitled to the benefits of said settlement. In our opinion, therefore, by reading Clause (7) it is clear that this settlement was not restricted to only members of the other union. Any employee by signing the settlement would have become entitled to the benefits of the settlement. It is not the case of the complainant-union in its complaint that any of the terms of the settlement were, so designed as to exclude the members of the complainant- union. It is also not the case that any clause in the settlement agreement was included mala fide to harm the interest of the workers. In our opinion, therefore, it cannot be said that the settlement was not a real settlement or that it had any clauses which were included mala fide. It is further to be seen that the learned single Judge has held that the finding recorded by the Industrial Court that the employer is guilty of unfair labour practice under items 9 of Schedule IV is not correct and he has set aside that finding. In our opinion, therefore, as a consequence it was for the learned single Judge to consider whether reliefs that have been granted by the Industrial Court can be sustained in the absence of the finding that the employer is guilty of unfair labour practice under item 9 of Schedule IV of the Act.

10. In our opinion, the Industrial Court on the overall view of the matter could not have, issued directions for extending the benefits of the settlement to the other workers without they signing the settlement. It is further to be seen here that if the learned Counsel appearing for the complainant-union is right in submitting that there was no real settlement and it was only a purported settlement, in our opinion, in view of the law laid down by the Supreme Court in the case of *R.N. Gosain v. Yashpal Dhir* (supra), they are not entitled to claim benefits of the settlement, which according to them is not the real settlement, but only a purported settlement.

11. Taking overall view of the matter, therefore, in our opinion, as the settlement had a productivity clause, admittedly workers who were members of the complainant-union had not signed the settlement, though they were made aware of the settlement, the Industrial Court was not justified in issuing the directions for enforcement of that settlement in favour of the members of the complainant-union without they signing the settlement.

12. In the result, therefore, the present appeal succeeds and is allowed. The order of the learned single Judge impugned in the appeal is set aside as also the order of the Industrial Court which was impugned in the writ petition, which has been decided by the learned single Judge. The complaint filed by the complainant-union is dismissed. No order as to costs.

13. The office shall permit the employer to withdraw the amount which they have deposited pursuant to the interim order passed in the Appeal, with accruals after a period of eight weeks.

14. In view of dismissal of Appeal, Notice of Motion No. 3683/2003 is also disposed of.