

(1969) 10 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 771 of 1968

Indian Detonators Ltd., Kukatpalli

APPELLANT

Vs

Indian Detonators Ltd., Workers, Union and Others

RESPONDENT

Date of Decision : 14-10-1969

Acts Referred:

Industrial Disputes Act, 1947 — Section 19(3)

Citation : AIR 1970 AP 432

Hon'ble Judges : Chinnappa Reddy, J

Bench : Single Bench

Advocate : P.R. Ramachandra Rao, for the Appellant; V. Jagannadha Rao, Govt. Pleader and C. Seetharamiah, for the Respondent

Judgement

1. The Indian Detonators Limited is the petitioner in this application for the issue of a writ of Certiorari in which a decision of the Industrial Tribunal, Hyderabad is questioned. The case of the petitioner is as follows:----

There was an Industrial Dispute between the Indian Detonators Limited and its workmen, represented by the Indian Detonators Limited Employees" Union. the Industrial Dispute was referred by the Government to the Industrial Tribunal for adjudication. Before the Tribunal could take up the dispute for adjudication the parties, that is, the management and the Employees" Union arrived at a settlement which they agreed should be in force till 30-6-1969. One of the terms of the settlement was that the workmen should not, during the period of operation of the settlements, make any demands involving a financial burden on the management. The parties requested the Tribunal to pass an award in terms of the settlement and the Tribunal did so on 29-4-1966.

On 16-6-1967, a rival and newly registered Union called the Indian Detonators Limited Workers" Union Presented a charter of demands to the Management. Some of the demands involved financial burden on the management. Conciliation proceedings failed and the Conciliation Officer submitted a report to that effect to the Government. At that stage the Government entertained a doubt whether the

settlement embodied a doubt whether the settlement embodied in the award of 29-4-1966 would be in force till 30-6-1969 or whether it would be in force for a period of one year only from the date of award. The Government therefore referred the question for the decision of the Tribunal u/s 36-A of the Industrial Disputes Act. The Tribunal held that the necessary consequence of the settlement merging in the award was that it would be in force for a period of one year only from the date of award. The management questions the decision of the Tribunal and contends that the award was in force till 30-6-1969.

2. The worker" Union submits that the earlier settlement was a collusive settlement between the management and the Employees" Union and that the Employees" Union represented no more than 15 out of 558 workmen and all the 15 were drivers of motor vehicles. On the other hand the Worker" Union represented 507 out of 558 workmen. The period for which an award may be in force is determined by statute and it is not open to the management to bargain out of the statute.

3. In order to appreciate the question at issue it is necessary to refer to a few statutory provisions. The definition of a "settlement" in Section 2(p) of the Act comprehends a settlement arrived at in the course of conciliation proceeding as well as a written agreement between the employer and the workmen arrived at otherwise than in the course of conciliation proceedings. u/s 12 of the Act it is the duty of the Conciliation Officer to endeavor to induce the parties to come to a fair and amicable settlement of an existing or an apprehended industrial dispute. Without delay, he is not to investigate the dispute and all matters affecting the merits and the right settlement of the dispute. he is to report to the Government whether a settlement is arrived at or not. if he reports that there is no settlement, the Government is to decide whether a reference is to be made to a Tribunal, Board, or Labour Court. Section 10 authorises the Government not to refer any existing or apprehended industrial dispute for adjudication to a Tribunal, Board or Labour Court.

Section 15 prescribes the duties of a Tribunal and Section 16(2) prescribes the form of the award of a Tribunal. Section 2(b) defines an award as meaning an interim or a final "determination" of any industrial dispute or any question relating thereto. Section 18 provides that a settlement arrived at by an agreement between the employer and the workmen otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement. Where, however, a settlement is arrived at in the course of conciliation proceedings or where a Tribunal makes an award, the settlement or award shall be binding not only on the parties to the dispute, but, where one of the parties is composed of workmen it shall also be binding on all persons employed in the establishment or part of the establishment, as the case may be, on the date of the dispute and all persons who subsequently become employed in that establishment or part.

Thus while a settlement arrived at in the course of conciliation proceedings and

an award are binding on every workman of the establishment a settlement arrived at otherwise than in the course of conciliation proceedings is binding only on the parties to the agreement. This distinction of great importance. u/s 19, a settlement, whether it is arrived at in the course of conciliation proceedings or otherwise than in the course of conciliation proceedings, comes into operation on the date agreed upon by the parties to the dispute and shall be binding for the period agreed upon by the parties. If no date or period are agreed upon it shall come into operation on the date on which the memorandum is signed by the parties and shall be binding for a period of six months from that date. An award of a Tribunal, however, becomes enforceable on the expiry of 30 days from the date of publication of the award by the Government. This is provided by Section 17(a) of the Act.

Section 19(3) of the Act provides that the award shall remain in operation for period of one year from the date on which the award becomes enforceable. The government is clothed with the power to reduce the period during which an award shall remain in operation. The Government is also vested with the power to extend the period of operation of an award by any period not exceeding one year at a time. So, however, that the total period of operation of an award does not exceed three years.

4. From a perusal of the provisions, referred to above, it is evident that the Industrial Disputes Act does not prescribe the procedure to be followed by an Industrial Tribunal if the parties to the dispute before it arrive at a settlement and report such settlement to the Tribunal. As pointed out by their Lordships of the Supreme Court in *The State of Bihar Vs. D.N. Ganguly and Others*, industrial peace and harmony being the primary objects of the Act, it would be unreasonable for a Tribunal to insist upon dealing with the dispute on the merits notwithstanding its settlement. Their Lordships said:---

"It is true that the Act does not contain any provision specifically authorising the industrial tribunal to record a compromise and pass an award in its terms corresponding to the provisions of Order XXIII. Rule 3 of the Code of Civil Procedure. But it would be very unreasonable to assume that the industrial tribunal would insist upon dealing with the dispute on the merits even after it is informed that the dispute has been amicably settled between the parties. We have already indicated that amicable settlements of industrial peace and harmony are the primary objects of this Act. Settlements reached before the conciliation officers or boards are specifically dealt with by Sections 12(2) and 13(3) and the same are made binding u/s 18. There can, therefore, be no doubt that if an industrial dispute before a tribunal is amicably settled, the tribunal would immediately agree to make an award in terms of the settlement between the parties."

This does not, however, mean that an industrial Tribunal would mechanically accept a settlement arrived at between the parties and pass an award in terms of the settlement. Since an award has the effect of binding not only the parties to

the dispute, but also all to her workmen of the establishment it is the duty of a Tribunal in such an event, to consider whether the settlement arrived at is fair, just and equitable. An award, according to the definition, is a determination of the dispute. If there is no determination there can be no award. Where an agreement arrived at between the parties is presented to the Tribunal it May adopt it as its own determination and pass an award in terms of the agreement. But then it must apply its mind to the terms of the agreement and decided whether the agreement is a fair and just settlement of the dispute. it may then adopt it as its won award. This position was explained by Ramachandra Iyer J., in Workers, 32 Textile Mills in Workers employed in 32 Textile Mills in Coimbatore Vs. Management of Dhanalakshmi Mills Ltd., Tiruppur and Others, . In that case the learned Judge observed:---

"The question that has to be decided is whether the compromise entered into on 23rd March, 1957 by the Indian National Trade, Union Congress Unions, could be held to finally terminate the industrial dispute and whether there has been a valid award in regard to it. The Industrial Tribunal merely adopted the compromise, and passed an award in terms thereof. There was no finding arrived at by the Industrial Tribunal after hearing all the parties as to whether that agreement was a fair and just settlement of the dispute, so that it could be adopted as an award by the Tribunal itself There has been no determination as such by the Industrial Tribunal of the question referred to it There is no power in the Industrial Tribunal similar to one conferred under Order 23, Rule 3 of the CPC to record a compromise. What the Industrial Tribunal is empowered, is to pass an award which is defined as interim or final determination.

It is implicit in the word "determination" that it should be judicial, implying that the Tribunal exercise its won judgment. This does not, however, mean that the Tribunal is precluded form taking note of a compromise entered into between the workers and the management. where there is a compromise, it should consider whether, in its opinion, the compromise could be adopted as its own determination of the dispute, that is, whether it is fair, just and equitable between the parties.

This is necessary as the award would affect parties other than those actually appearing before the Tribunal. Section 18 of the Act states that an award which has become enforceable shall be binding on the parties to the industrial dispute, namely, the management and all the workmen. The binding nature of the award does not depend on any particular worker or the union to which he belongs to nomine a party."

5. In the present case the agreement was reported to the Tribunal and an award was passed in terms of the agreement. The questions whether the award was in force till 13-6-1969 o whether it was in force for a period of one year only from the date of publication of the award. According to the respondents once the

agreement merged into the award it ceased to be a settlement and it could only operate as an award in which case it was in force for a period of one year only from the date of publication of the award. on the other hand it was urged by the learned counsel for the management that u/s 19(3) while an award was to remain in operation for a period of one year form the date of publication, Section 19(3) itself mentioned that it was "subject to the provisions of this Section". Therefore, it was urged that an award in terms of a settlement would, like a settlement, be in operation for the period agreed upon as provided by Section 19(2) of the Act.

I am afraid it is impossible to agree with this contention. An award cannot be an award for one purpose and a settlement for another purpose. A Settlement which merges into an award loses its character as a settlement once it becomes an award. It will operate as an award and it will be in operation for the period provided by the statute. The expression "subject to the provisions of this section" in Sec. 19(3) of the Act refers only to those provisions which are applicable to award and not to settlements. Such provisions are contained in the two provisos to section 19(3), in Section 19(4) and in section 19(6). The learned counsel for the petitioner contended that it would be unreasonable to hold that while a settlement arrived at in the course of conciliation proceedings would be binding for the period agreed upon, an award in terms of a settlement would be binding for a period of one year only. He questioned why a greater sanctity should be attached to a settlement arrived at in the course of conciliation proceedings rather than to an award of an Industrial Tribunal embodying the terms of settlement even after a determination that the terms were just and fair.

Possibly it is because a Conciliation Officer has greater freedom of action, and, before he reports to the Government that a matter has been settled by agreement between the parties he investigates with a view to find out whether the agreement represents the agreement of all the workmen. An Industrial Tribunal, notwithstanding that its award is binding on Lal the workmen, may not have the same freedom to make a roving investigation to find out whether the agreement represents the agreement of all the workmen, though its award is binding on all the workmen. On the other hand, the plaint truth may be that the situation was not contemplated by the legislature. But effect must be given to the provisions of the statute as they stand and I must hold that the award was in operation for a period of one year only.

In the result the Writ Petition is dismissed, with costs. Advocate's fee Rs. 100/-=.

6. Petition dismissed.