
(1996) 02 BOM CK 0039

In the Bombay High Court

Case No : Writ Petition No. 1085 of 1993

Johnson and Johnson Ltd.

APPELLANT

Vs

Maharashtra General Kamgar Union and others

RESPONDENT

Date of Decision : 14-02-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 18

Citation : (1996) 5 BomCR 181 : (1997) 2 LLJ 1157

Hon'ble Judges : G.R. Majithia, J; Devkant Trivedi, J

Bench : Division Bench

Advocate : S.K. Talsania, instructed by M/s. Crawford and Bayley and Co, for the Appellant; N.M. Ganguli, for the Respondent

Judgement

1. The order dated April 16 1990 of the Bombay High Court, Bombay 19 of 1990 in this writ petition under Article 226 of the Constitution of India. 5

2. Respondent No. 1 is a registered trade union under the Trade Unions Act and is also a recognised Union under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 for the employees employed in the undertaking of the petitioner's factory at L.B.S. Marg, Mulund. Bombay. The Union started functioning amongst the workmen of the petitioner company's factory at Mulund in the year 1982. The settlement dated October 7, 1993 was arrived at as a result of negotiations initially with the President of the Union, which negotiations were later continued And concluded with the 20 Factory Unit Committee of the Union. The settlement was signed by the Factory Unit Committee and not by the President of the Union. The settlement was accepted by the Union and implemented in respect of all the workmen. The 2s next settlement dated July 24, 1987 was initially 1 1 negotiated with the President of the Union. The negotiations were later continued and concluded by the Factory Unit Committee of the Union . The settlement was also signed by the 5 President of the Union. On termination of the said settlement dated July 24, 1987 a Charter of Demands dated September 15, 1989 was submitted by the Union. "Re

Charter of Demands was negotiated initially with the President of the 10 union. The negotiations later on continued and were concluded on or about June 6, 1990 with the Factory Unit Committee of the Union but the settlement was not signed either by the Unit Committee or by the President of the Union. The overwhelming majority of the workers including few Committee members did not want industrial peace to be disturbed. The settlement dated October 29, 1990 was signed by 355 including three Unit Committee member Pleorsy, Ceo Sut of a total number of 362 employees. The benefit under the settlement was extended to all the employees who had signed the settlement. 355 employees out of a total number of 362 employees accepted the benefits. One 25 workman who was member of the Factory Union Committee subsequently accepted benefits 1 iss during the Tendency of the complaint before the Industrial Court. Only six employees did not accept the benefits.

3. The Union filed a complaint (ULP) No. 5 1319 of 1990 alleging unfair labour practice under Items 1 (c), 2(a), 3 and 5 of Schedule 11 and Items 5, 9 and 10 of Schedule IV of the Act. The Industrial Court held that Items 2(a), 3 and 5 of Schedule 11 and Item 10 of Schedule IV of the 10 Act are not proved. However, it held that in view of the fact that the settlement dated October 29, 1990 was not signed by the President of i the the first respondent Union, the same is in contravention of Section 18 of the Industrial 15 Disputes Act and as such amounted to unfair labour practice under Item 9 of Schedule IV of the 1 Act and further held, that not extending the benefit of the said settlement to the six employees who 1 have not signed the settlement, amounted to 20 i "showing favouritism or partiality to one set of workers regardless of merits" which will be unfair i labour practice under Item 5 of Schedule IV of the Act. It further held that the payment made as per the said settlement amounted to "granting wage in crease to employees at crucial period of Union j Organization", which will amount to unfair labour practice under Item 1 (c) of Schedule 11 of the Act. The Industrial Court, after appreciation of the evidence and the rival contentions of parties, observed as under :

"The procedure followed by the management to arrive at the settlement dated October 29, 1990 by having negotiations with the 35 Factory Unit Committee is totally alien to the provisions of law. It is well settled principle of law, that the procedure which is not in consonance with the provisions of law even if followed with the consent of both 40 the parties, it is to be held as illegal, if at all this view is required to be fortified by the observations made by the Supreme Court, one is required to look into the case of Automobile Products of India Employees" Union Vs. Association of Engineering Workers, Bombay and others, . In that case the procedure of holding any secret ballot was struck down as it was a procedure alien 1 to the provisions of law. It is observed that 1 recognition by ballot or by any method so X other than that laid down in that Act is therefore alien to the Act. Recognition granted to the Union on the basis of such alien procedure was cancelled. Applying the same principle to the facts of the present case, one 5 can very well say that the settlement arrived at by the company other than

recognised union even with consent of the Factory Unit Committee cannot be held to be legal."

4. These observations indicate that the Industrial Court was persuaded to record a finding, that as the settlement arrived at was in violation of the prescribed procedure, viz., it was not signed by the President of the Union, it will be deemed to be illegal and thereby it amounted to unfair labour practice. Before the Industrial Court it was not disputed that the settlement dated October 29, 1990 has been confirmed by as many as 355 workmen out of 362 and these workmen had accepted the benefit. The propriety of the settlement was never put under consideration by the parties to the lis, but only the legality. 25

5. The Industrial Court in paragraph 30 of its judgment observed thus :

"It is repeatedly urged that the said settlement dated October 29, 1990 has been confirmed by as many as 355 workmen out of 362. My attention has also been drawn to the fact, that 355 workmen have signed the settlement and had accepted the benefits. This position is more or less undisputed. It is significant to note that propriety of the settlement is not a matter of consideration of dispute in this case. Mr. Kulkarni has strenuously urged at the bar with all force at his command, that the real controversy relates to the legality of the settlement dated October 29, 1990. As the said settlement has not been the outcome of the final negotiations with the recognised union, it can by no stretch of imagination, be branded as legal settlement. 45

6. Evidence has come on record that in the past a settlement has been brought about by negotiations and discussions with the Factory Unit Committee members. The management witness S. B. Abhyankar stated in his evidence that the respondent Union had submitted a Charter of Demands in the year 1982 by letter dated July 12, 1982. The negotiations were initiated with the President of the Union but the negotiations with the President could not be concluded as he was not prepared to accept the offer of revision in service conditions by the company but dictated his own conditions, which were not accepted by the company. The Factory Unit Committee of the respondent Union continued negotiations with the petitioner's representatives. The negotiations with the Factory Unit Committee resulted in conclusion of settlement dated October 7, 1983. This settlement was implemented and accepted by all the workmen of Mulund plant. Mr. Abhyankar also further testified that on the expiry of settlement dated October 7, 1983 the respondent Union submitted a fresh charter of demands on April 22, 1986. The prolonged discussions between petitioner/management and Dr. Samant, President of the first respondent Union did not fructify. The Factory Unit Committee continued its negotiations with the representative of the management. The Factory Unit Committee gave an assurance to the petitioner that the settlement so arrived at will be got signed by it from the President of the respondent union. The settlement was arrived at between the management and the Factory Unit Committee after a long negotiation and it was got signed by the Factory Unit Committee from the

President of the Union on July 24, 1987. This witness in unequivocal terms stated, that, there existed practice under which the negotiations for the settlement 3, 5 were carried on by the Factory Unit Committee with the management. The negotiations led to settlements which were duly settled and implemented. The evidence of this witness was not assailed on this aspect. The only inference deducible from this evidence is that in the past, charter of demands were served by the 1st respondent union but the negotiations were carried on by the Factory Unit Committee with the management and these negotiations led to settlements 4, 5 which were accepted by the workmen and thereafter implemented. It appears, that in view of this past practice the impugned settlement dated October 29, 1990 was arrived at by the Factory Unit Committee with the management. 355 workmen including members of the 1st Factory Unit Committee out of 362 signed the settlement and accepted the benefit. Thereafter one workman accepted the benefit during the pendency of the complaint. Only six workmen, 5 for reasons undisclosed, did not accept the benefits. This admitted position leads us to the conclusion that the management did not consciously or intentionally commit unfair labour practice. The management and the 10 workmen did not want to disturb the industrial peace and harmony which was almost accomplished fact. The workmen were members of the 1st respondent Union but did not hesitate to arrive at a peaceful settlement with the management, when the circumstances so warranted. The Industrial Disputes Act has been enacted with the sole aim to bring industrial peace and harmony between the management and the workmen. The workmen, keeping the larger interest of their own welfare in view, entered into the settlement which is challenged by the respondent union on the ground, that it is not in conformity with the procedure prescribed. The procedure may have been violated but the settlement has achieved the object.

7. The learned Industrial Court applied the ratio of the judgment reported in the case of Association of (supra) to come to the conclusion that it was illegal, as it was arrived at in breach of the procedure prescribed. The facts in the said judgment are that the Automobile Products of India has two factories, one at Bhandup, Bombay and the other at Aurangabad employing about 1700 and 1000 workers respectively. "The Union of workers obtained a certificate of recognition from Industrial Court, Thane u/s 12 of the Act 40 on April 7, 1977 for the company's undertaking at Bhandup. While this Union was acting as a recognized union, many of the workers resigned from the said Union and formed a new Union called the Automobile Products of India Employees' Union. On October 9, 1981 the appellant-Union made an application to the Industrial Court, Thane u/s 13(1)(ii) of the Act for cancellation of the recognition of the first respondent Union on the ground that the 1st Union's membership in the Bhandup undertaking had fallen below 30 percent of the total strength of workmen in the undertaking for the preceding six months. The claim was controverted. The Industrial Court upheld the contention of the appellants and cancelled the recognition. This decision of the Industrial Court was upheld by the High Court.

8. The appellant-Union applied for its recognition before the Industrial Court. The Industrial Court referred the matter to the 10 Investigating Officer appointed under the Act to investigate the membership of both the Unions. While the Investigating Officer was in the process of verifying the membership of each Union, suggestions were made for deciding by secret 15 ballot as to which of the Unions commanded the majority. As per the suggestion, the first respondent-Union on December 19, 1985 submitted a draft proposal to the Industrial Court. The appellant-union also submitted its draft proposal on the same day i.e. on December 19, 1985 the Industrial Court passed an order directing the Investigating Officer to hold a secret ballot in the premises of the company within 30 days from the date of the order. The employees 25 of the company were entitled to v in the ballot but only those who were on the rolls of the company on July 1, 1985. The other employees who joined the company after July 1985 were disentitled to vote. The result of the ballot 30 showed that in 1985 workers voted, but only 157 ballot papers were valid. The appellant-Union got 798 votes whereas the first respondent Union got 780 votes. The Investigating Officer submitted his report to the Industrial Court. The 14 Industrial Court not only granted recognition to the appellant Union but cancelled the recognition to the respondent-Union . The decision of the Industrial Court was challenged in writ petition in this Court. This Court set aside the order 40 of the Industrial Court.

9. The only question posed before the appeal Court was whether the procedure adopted by the Industrial Court for granting recognition too the appellant-Union was illegal. The appeal Court held, that if a Union seeks recognition for itself by displacing the existing recognised Union, the applicant Union has, in addition, to satisfy that not only it had 30 percent of the membership during the six calendar months immediately preceding the calendar months in which it muse its application, but had also a larger membership during the said period than the membership of the recognised union. Even with regard to membership, therefore, what has to be satisfied by the concerned union is not only its minimum qualifying membership but also its 10 competing superiority in it over a continuous specified period. There was no provision, that the total membership has to be seen on that particular date and that it could be determined by ballots. It was in this situation, that the appeal 15 Court held, that the" procedure adopted by the Industrial Court was against the mandatory provisions of the Statute. The ratio of this judgment does not answer the question in dispute in this case. In that case the appeal Court found that the 20 statutory provision was violated. An action which is in violation of statutory provision is illegal. In the instant case what is alleged is that the settlement was arrived at in breach of the procedure, as it was not signed by the President 25 of the Union. The Industrial Court on evidence has found that the settlement is fair and accepted by all the workmen except six. Procedural violation will not render an act otherwise just fair and proper as illegal. In the instant case, the, learned Industrial Court was in error In holding, that that settlement was void and is illegal. The learned Industrial Court did not consider the practice which existed in this company

before arriving at the conclusion. Even otherwise the 35 matter as it stands today is purely academic. The management and the workers had arrived at a fresh settlement on June 13, 1994. This settlement is now in force as being agreement. Under the settlement dated October 29, 1990 since 40 357 workmen out of total 362 have accepted the benefits under the order of this Court dated June 14, 1993. Nothing survives.

10. In the result, writ petition succeeds. Rule 45 is invade absolute in terms of prayer clause (a) in so far as it reflects that the petitioners have committed the unfair labour practice. "Me findings so arrived at are not supported by law. No order as to costs.