

(1980) 02 DEL CK 0053

In the Delhi High Court

Case No : Civil Writ Appeal No. 1165 of 1969

Krishna Gold and Silver Thread Mills

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-02-1980

Acts Referred:

Citation : (1980) ILR Delhi 173 : (1980) LabIC 887

Hon'ble Judges : Leila Seth, J

Bench : Single Bench

Judgement

Leila Seth, J.

(1) The petitioner-employer by this petition under Article 226 of the Constitution of India prays a writ of certiorari to quash the certificate dated 23rd October, 1969 issued by the Labour Commissioner; Delhi, respondent No. 2 u/s 33C(1) of the Industrial Disputes Act, 1947 (to be referred to in brief as "the Act"). The certificate is for an amount of Rs. 24156.22. In accordance with this certificate, the Collector, Delhi, respondent No. 4 is directed to recover the above mentioned amount from the petitioner, in the same manner, as arrears of land revenue and distribute it to the 137 workmen. A list of the names and individual amounts due to each workman is enclosed with the certificate. As stated in the certificate, the amount is due as bonus for the year 1968-69, in accordance with the settlement dated 1st June, 1968.

(2) Mr. Rakesh Kanwar, learned counsel for the petitioner urged vehemently and at length, that the certificate dated 23rd October, 1969 was invalid, as it was issued without jurisdiction. He submitted, that there was a breach by the workmen of Clause 6 and, as such, bonus in terms of Clause 4 of the settlement dated 1st June, 1968 was not payable. He. Therefore, contended that since there was a dispute with regard to the liability to pay, the provisions of Section 33C(1) of the Act were not attracted, and/or the certificate could not be issued without deciding the dispute.

(3) The memorandum of settlement is in Hindi and the English translation as annexed to the writ petition shows Clauses 4 and 6 as follows :

"4.That the bonus for 1968-69 will be paid at the rate of 14 per cent of annual wages including incentive and overtime allowance subject to the condition that no workman shall be entitled to receive bonus in excess of Rs. 250. The payment of this bonus will be made by 14th July, 1969. No dispute in respect of payment of bonus for the previous year remains pending. If payment of bonus is not made to any worker, he will be entitled to take proceedings for the payment of bonus at the said rate."

"6.That in consideration of the settlement both the parties will try to increase production and discipline."

(4) It was strenuously urged that the words "in consideration make it clear that compliance with clause 6 was a condition precedent to payment of bonus in terms of clause 4. The workmen breached clause 6 as they went on strike on 29th June, 1968, so no money was due.

(5) Mr. G. D. Gupta, learned counsel for the respondents workmen, however, urged that clause 6 was in the nature of a goodwill clause and the payment of bonus as per clause 4 was not dependent on clause 6. He also placed clause 6 in Hindi as it was originally recorded. It is as follows :

"6.Iss aapsi samjhote ko vichar me rakhtey hue, dono pakash utpadan aur discipline ko badane me koshish karenge."

On examining the memorandum of settlement as recorded in Hindi, it was conceded by Mr. Rakesh Kanwar that his argument was not tenable, and clause 6 was, in fact, only a goodwill clause.

(6) On 16th July, 1979, after some hearing, learned counsel for the petitioner had prayed for time to seek instructions whether the writ petition had become instructions .On 2nd August. 1979, an application for amendment of the writ petition was filed being C. M. 2217 of 1979. On 3rd August, 1979, notice was issued on this application and counsel for the respondents-workmen accepted the notice. I, then. directed that the application be listed for disposal along with the main writ petition.

(7) The ground sought to be added by way of amendment is as follows :

" THAT the appropriate government has erred in issuing the recovery certificate u/s 33C(1)(e) of the Industrial Disputes Act inasmuch as the purported settlement which was sought to be enforced by issue of recovery certificate was not a settlement within the meaning of Industrial Disputes Act and Therefore the appropriate government had no jurisdiction to issue the recovery certificate. The purported settlement did not comply with the provisions of Rule 58 of the Industrial Disputes (Central) Rules, 1957 made u/s 38 of the Industrial Disputes Act. In the present case the copies of the purported settlement was not sent to

the various officers as envisaged under the said rule. The Conciliation Officer also did not send the Report to the Central Government along with the copy of the memorandum of settlement signed by the parties to the dispute and Therefore also the purported settlement was not a settlement as defined in the Industrial Disputes Act and could not be executed u/s 33C(1)(e) of the Industrial Dispute Act."

It is clear from the above that the non-compliance of the provisions of rule 58 of the Industrial Disputes (Central) Rules, 1957 (to be referred to in brief as "the Rules"), was being urged. It is, however, not stated clearly in the said ground or application whether there has been non-compliance of rule 58(3) or rule 58(4) of the Rules. Section 33C(1)(e) is obviously a typographical error for Section 33C(1).

(8) On 8th August, 1979, I directed respondents 2 and 3, the Labour Commissioner and the Conciliation Officer to produce the record in order to ascertain factually whether there had been any compliance of rule 58(4). Some records were produced but they pertained to a subsequent reference u/s 36A. The matter was, thereafter, adjourned from time to time in order to ascertain whether a copy of the settlement had been sent to the Officer authorised in this behalf by the appropriate Government in compliance with Section 2(p) of the Act. Further, respondents 1 to 4 were also directed to file the notifications, if any, made under rule 2(f) of the Rules, with regard to appointment of the appropriate authority in the union territory, as also any notification u/s 2(p) of the Act with regard to an officer authorized by the appropriate Government, to whom a copy of the settlement was to be sent.

(9) Mr. B. P. Jain, Deputy Labour Commissioner, Delhi Administration, Delhi appeared on various dates and sought time to try and trace out the notifications, if any, and file them. By an affidavit dated 26th November, 1979, the said Mr. B. P. Jain states that despite his best efforts, he could not locate the notifications. Subsequently, by an affidavit dated 7th January, 1980, he stated as follows :

" THAT in pursuance of the directions given by this Hon''ble Court, I made efforts to trace the notifications, if any, issued under Rule 2(f) of the Industrial Disputes (Central) Rules, 1957 with regard to the authorisation of the officers by the appropriate Government to whom the copy of the settlement is required to be sent.

2.That the Delhi Administration has appointed Conciliation Officers in accordance with the provisions of the Industrial Disputes Act, 1947 to whom copies of settlements could be sent. However, it appears that no officer has been authorised by the appropriate Government in pursuance of the provisions contained in Section 2(p) of the Industrial Disputes Act, 1947 or rule 2(f) of the Industrial Disputes (Central) Rules, 1957."

Mr. B. P. Jain also stated in Court that no other record was traceable except what had been already produced.

(10) Mr. G. D. Gupta, learned counsel for respondents 5 to 165, opposed the application for amendment as being mala fide, belated and vague. He has also submitted that it would entail an enquiry into disputed questions of fact. He further contended that, in any event, there had been compliance with rule 58(3) and rule 58(4) was not applicable as the settlement was arrived at in the course of conciliation proceedings.

(11) It is correct that the application for amendment is belated. The writ petition was filed in 1969 and the application has been moved almost ten years later during the course of hearing. No such objection with regard to Rule 58 was taken in the proceedings u/s 33C(1) of the Act. But, in view of the fact that the certificate sought to be quashed is based on the settlement of 1st June, 1968, the validity of which is being challenged, it would appear to me that the addition of the ground should be permitted. As set out above, it is contended therein that the settlement is not a settlement as defined by the Act and, Therefore, could not be executed u/s 33C(1) of the Act. This goes to the root of the matter, and the petitioner should be allowed to add the ground especially if no injustice is caused to the other side.

(12) The amended ground is ambulatory and attempts to cover both the non-compliance of rule 58(3) and rule 58(4). This is contradictory as Rule 58(3) pertains to a settlement arrived at in the course of conciliation proceedings whereas rule 58(4) deals with a settlement arrived at outside conciliation proceedings.

(13) However, Mr. Rakesh Kanwar, learned counsel for the petitioner pleaded that rule 58(4) had not been complied with, but should it be a settlement in the course of conciliation proceedings, then rule 58(3) had not been complied with.

(14) Rule 58 requires the settlement to be in Form H. Form H provides that the names of the parties representing the employer and those representing the workmen should be indicated. It also provides for a short recital of the case and the terms of settlement. It requires the signature of the parties and attestation of two witnesses. Below this it requires the signatures of the Conciliation Officer or the Board Conciliation whichever is applicable. This requirement of the signature of the Conciliation Officer is in cases where the settlement is effected by the Conciliation Officer or the Board of Conciliation. Where the settlement is arrived at between the employer and his workmen, otherwise then in the course of conciliation proceedings, this signature is not required. However, in that case the Form provides for copies to be sent to (i) Assistant Labour Commissioner (Central), (ii) Regional Labour Commissioner (Central), (iii) Chief Labour Commissioner (Central) and (iv) the Secretary, Government of India, Ministry of Labour, New Delhi.

(15) The memorandum of settlement is in the required form and contains the signatures of the parties as also the signature of Shri S. P. Joshi, Conciliation Officer, Delhi, dated 1st June, 1968. The attestation of the witnesses is also to be

found. The short recital of the dispute which precedes the terms of settlement indicates that the workman raised certain questions with regard to their demands and mutual discussions were held from time to time in the Conciliation Office which resulted in the agreement dated 1st June, 1968.

(16) It would, Therefore, appear that the settlement was arrived at with the assistance and concurrence of the Conciliation Officer in the course of conciliation proceedings. This is also borne out from the record produced which pertained to a subsequent reference (the earlier record not being traceable) it was stated in the preamble of the referring order dated 25th April, 1969, "the settlement in course of conciliation was signed on 1-6-68 between the management of M/s. Krishna Gold & Silver Thread Mills and their workmen, as represented by Engineering Mazdoor Union, 11-Krishna Market, Paharganj, New Delhi".

(17) Mr. Rakesh Kanwar relied on a Supreme Court decision in Workmen of M/s. Delhi Cloth General Mills Ltd. v. The Management of M/s. Delhi Court and General Mills Ltd. Air 1979 S.C. 1851(1). He urged that though this case dealt with non-compliance of rule 58(4), the same principles would apply to rule 58(3). He, Therefore, contended that it was the duty of the respondents 5 to 165 to have established the validity of the settlement on which the certificate of respondent No. 2 is based. Sub-rule (3) of rule 58 not having been strictly followed, there being no evidence that a report was sent to the Central Government, the settlement was not of a binding character.

(18) In reply, Mr. G. D. Gupta, submitted that there had been compliance with Rule 58(3); in any event there had been substantial compliance with the provisions of Rule 58(3) in that, there is evidence that, the Government was informed. Further the petitioner in its letter to the Labour Commissioner dated 12th August, 1969 itself had considered it a mere technicality and had implemented the settlement and paid bonus in accordance with it, to the workmen who had not gone on strike. He, further, contended that there was a basic difference between a settlement arrived at in the course of conciliation and otherwise, and so the decision in Workmen of M/s. Delhi Cloth General Mill? Ltd. (supra) would not be attracted.

(19) In order to appreciate the real contention, certain provisions of the Act and Rules have to be examined. Originally "a settlement" was defined in section 2(p) of the Act as follows :

"2(P)"Settlement" means a settlement arrived at in the course of a conciliation proceeding."

Private settlements were not recognised. They had only a moral value but were not legally binding and could be repudiated. By amending Act 36 of 1956, a private settlement was also recognised if it was signed in the prescribed manner and a copy was sent to the appropriate Government and Conciliation Officer. By a further amendment, the copy was to be sent to the Officer authorized in this behalf by the appropriate Government. Section 2(p) now reads :

"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 the 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."

(20) Section 12 of the Act sets out the duties of Conciliation Officers. They are required to mediate and induce the parties to arrive at "a fair and amicable settlement of the dispute". If a dispute is resolved, the Conciliation Officer is to send a report to the appropriate Government or an officer authorized in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute. If no settlement is reached then he is to send what is commonly known as a Failure Report. The time within which the report is to be sent is 14 days but can be extended.

(21) Section 18 of the Act provides that a settlement de hors conciliation proceeding will be binding on the parties to the agreement, whereas a settlement in the course of conciliation is binding on all parties to the dispute. In the case of an employer, to his heirs, successors and assigns in respect of the establishment to which the dispute relates and in the case of workmen to all persons employed in the establishment or who subsequently become employed.

(22) Section 19 provides that the settlement shall come into operation on the date agreed upon and if there is no such date then" the date on which the memorandum of settlement is signed. It will be binding for such period as provided in the settlement. If no period is provided, then it will continue to bind unless terminated by a two months notice in writing.

(23) Rule 58 (3) and (4) of the Rules are as follows :
"58.....

(3)Where a settlement is arrived at in the course of conciliation proceeding the Conciliation Officer shall send a report thereof to the Central Government together with a copy of the Memorandum of settlement signed by the parties to the dispute.

(4)Where a settlement is arrived at between an employer and his workmen otherwise than in the course conciliation proceeding before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Central Government, the Chief Labour Commissioner (Central), New Delhi, and the Regional Labour Commissioner (Central) and to the Assistant Labour Commissioner (Central) concerned".

Rule 2(f) of the Rules reads :

" IN relation to an industrial dispute in a Union Territory, for which the appropriate Government is the Central Government reference to the Central Government or the Government of India shall be construed as a reference to the

Administrator of the territory, and reference to the Chief Labour Commissioner (Central), Regional Labour Commissioner (Central) and the Assistant Labour Commissioner (Central) shall be construed as reference to the appropriate authority, appointed in that behalf by the Administrator of the territory."

It would, Therefore, appear from rule 2(f), that for the Union Territory of Delhi, reference to the Central Government in Rule 58(3) is to be construed as reference to the Administrator of the Union Territory. The report was, Therefore, to be sent by the Conciliation Officer to the Lieutenant Governor. Whether it was, in fact, sent to him is not known, as the records are not traceable; however, it is admitted that the officers of Delhi Administration e.g. Labour Commissioner, Deputy Labour Commissioner etc. were aware and had knowledge of the settlement. In fact, the Conciliation Officer, Mr. S. P. Joshi was himself Assistant Labour Commissioner, and the Labour Commissioner and the Deputy Labour Commissioner were asked by respondent No. 5 to intervene by its letter of 15th July, 1969. The request was made to see that the settlement dated 1st June, 1968 be implemented.

(24) Let me assume, that a report together with the signed memorandum was not sent to the Lieutenant Governor in strict compliance of Rule 58(3). The question, Therefore, posed is, would "a settlement arrived at in the course of conciliation proceedings" not be "a settlement" as defined in the Act, if the Conciliation Officer inadvertently or otherwise failed to send a report with the signed memorandum to the appropriate Government/authorized Officer.

(25) It would appear to me that if the settlement is arrived at in the course of conciliation, then the requirement that a signed copy be sent to the appropriate Government/authorised Officer is not a condition precedent, to give it validity. Further failure on the part of the Conciliation Officer to comply with the requirement would not take away from the binding character of the settlement u/s 18(3) and the settlement would come into operation on the date agreed or in its absence the date of signatures. This is apparent from the definition of "settlement" in Section 2(p) of the Act. There are two types of settlement :

(I) in the course of conciliation proceedings and (ii) de hors conciliation proceedings.

There is a clear distinction between a settlement in the course of conciliation and one outside it. In the first case in accordance with Section 2(p) such a settlement is a "settlement". It does not require the fulfillment of any further conditions. Whereas a written agreement between the employer and the workmen outside conciliation is a "settlement" only if it complies with the following conditions : (i) signed by the parties in the prescribed manner, and

(II) a copy thereof has been sent to the authorized officer of the appropriate Government and the Conciliation Officer.

This obligation to send the copy is on the parties to the agreement.

(26) It is true, that in terms of Section 12(3) a duty is cast on the conciliation Officer to send a report to the appropriate Government or authorised officer together with a signed memorandum of the settlement. But the Conciliation Officer's failure to perform his duty to dispatch the signed copy and report cannot invalidate the settlement arrived at in the course of conciliation.

(27) In *Workmen of M/s. Delhi Cloth General Mills Ltd.* (supra) the Supreme Court was dealing with a settlement *de hors* conciliation proceedings. It held that in the light of the definition of settlement in Section 2(p) and keeping in view its object and purpose rule 58(4) had to be fully complied in order to clothe the settlement with a binding character.

(28) The situation with regard to a settlement arrived at in the course of conciliation proceedings is clearly different. The purpose of the conciliation machinery is to help workmen and employers to settle their day to day disputes and arrive at a fair settlement. This is brought about with the aid of recognised official agencies and bears the signature of the Conciliation Officer/Conciliation Board. As such it is placed on a higher footing than a settlement *de hors* conciliation.

(29) Therefore, it would appear to me, that the principles in the decision of *Workmen of M/s. Delhi Cloth General Mills Ltd.* (supra), would not be attracted to the settlement dated 1st June, 1968; it being a "settlement" within the meaning of the first limb of Section 2(p) of the Act and so executable u/s 33C(1) of the Act without strict compliance of rule 58(3).

(30) For the reasons outlined above, I discharge the rule with costs.