
(2008) 02 KAR CK 0072
In the Karnataka High Court
Case No : Writ Petition No. 16356 of 2007

Mangalore Chemicals and Fertilizers Ltd.	APPELLANT
Vs	
MCF Worker's Union	RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 11, 18 (1)

Citation : (2008) 02 KAR CK 0072

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : S.N. Murthy and Associates, for the Appellant; Subba Rao and Co., for the Respondent

Final Decision : Dismissed

Judgement

Subhash B. Adi, J.—This writ petition is directed against the order passed on 06.01.2006, 07.02.2007 and 22.09.2007 by the Industrial Tribunal in Reference No. 16/2001 produced at Annexures "P", "S" and "T"

2. The facts leading to this case are:

The respondent - Union sought for reference of dispute in terms of the Government Order dated 23.04.2001 in respect of the following Issues:

1. I Are the MCF Workers Union Justified in placing the following demands as listed down In Annexure-1 vide their letter dated 18.1.2001 against the management of MCF Limited.

2. If not, to what relief the workers are entitled to?

II. Are the Management of MCF Limited, Mangalore justified in demanding from, the workmen,

(i) That the workers should agree rationalization and manning norms as per the recommendations an closed in Annexure-2 (by Prolf. T.S. Nagabhushan)

(ii) That the workers should participate in training programme chalked out by the management without demanding overtime allowance,

2. If not, to what relief the Management is entitled?

III. 1. Are the workmen represented by MCF Workers Union justified in going on strike w.e.f. 19.3.2001?

2. If not, to what relief the workmen are entitled?

On these issues, reference was made to the Industrial Tribunal.

3. It is not in dispute that, during the pendency of the Preference a settlement is arrived on 11.09.2002 between the Management and the Union excluding the Union representing the workmen who have raised this dispute. In terms of the said settlement certain service benefits were extended to the employees who had signed the settlement. In October 2002, the Union filed an application u/s 11 of the I.D. Act inter-alia alleging that, similarly placed employees who have signed the settlement have been paid the better service benefits and the employees who have sought for reference of their dispute are not paid the same, only on the ground that, they have not signed the settlement.

4. The said application was opposed by the Management inter-alia alleging that, the settlement is applicable only to the workmen who have signed the settlement and it cannot be extended to those who have not signed the settlement. Alternatively stated that, if the workmen who have sought for reference of the dispute, if they signed the settlement the said benefits will extended or in the alternative if the Tribunal finally upholds the settlement, the said benefit would be extended to those workmen.

5. The Tribunal heard the said application and by its order dated 06.01.2006 ordered as under:

Pending disposal of the points of dispute under this reference, the II Party is directed to extend the Pay Scale and other financial and service benefits covers under the Memorandum of Settlement of the year 2002 and 2004 to the workers of I Party Union Prospectively from this date. The II Party Management shall not take any action in the nature of victimisation to the workers of the I Party Union. The I Party workers are also fastened with the obligations provided in the said two settlements prospectively from this day.

6. The said order was called in question before this Court in W.P. No. 4919/2007. This Court disposed of the said writ petition on 11.04.2007 inter-alia recording the submission made by the learned Counsel appearing for the Management, to the effect that, the Management has complied with the order dated 06.01.2006.

7. In the light of the submission made by the learned Counsel for the Management and since there was no material showing the compliance, this Court remanded the matter to the Tribunal, permitting the Management to place such material before the Tribunal to justify the compliance with the order dated

06.01.2006.

8. Thereafter, another application was filed by the Union u/s 11 of the I.D. Act on 06.06.2006 inter-alia alleging that, the benefit which has accrued to 452 workers has not been extended to the 84 workers who have red Bed the dispute, despite of the interim order dated 06.01.2006. The said application was opposed and thereafter, the Tribunal by its order dated 22.09.2007 observed that, withholding of exgratia payments to the members of the first party union, except 9 workers stated in Memo dated 30.09.2007 is not in due compliance of the order dated 06.01.2006.

9. This order and the earlier orders are called in question by the Management.

10. Sri. S.N. Murthy, Learned Senior Counsel, appearing for the petitioner submitted that, on 06.01.2006 the Tribunal directed the Management to extend pay seals and other financial and service benefits under the Memorandum of settlement of the year 2002 and 2004 to the workers of the I Party Union prospectively from the said date. Emphasizing the words "prospectively from this date", he submitted that, the benefits accrued to the members of the respondent - Union were paid from the date of the order, strictly in compliance of the interim order passed on 06.01.2006. He submitted that, ex-gratia payments in terms of Clause 33 of the Settlement dated 29th July 2004 in respect of the payment for the period from 01.01.2004 to 01.07.2004 on which day the settlement came into force and this is one time payment made under Clause 33(a) and these amounts are paid for the period much prior to the interim order passed by the Tribunal on 06.01.2006, these are not the payments to be made prospectively to the order passed by the Tribunal and these amounts are paid much prior to the interim order and they cannot be treated as prospective payment. He submitted that, even with reference to equal installment of the Component (B), ex-gratia amount is concerned, the said payment is subject to payment of ex-gratia under component (A) and not otherwise. Component (B) of the ex-gratia amount, is payable in 3 equal annual installments, first installment being payable only after the lapse of 12 months from the date of payment of Component (A) and not otherwise. Even otherwise, he also submitted that, these are all payments made prior to the interim order and they are made to the employees who have entered into settlement as one time payment subject to the fulfillment of the requirements under the said Clause. This amount cannot be treated as an amount falls due subsequent to 06.01.2006 and is not available for the purpose of payment to the workmen of the respondent ? Union.

11. He also submitted that, the employees who have entered into settlement are Class by themselves as against the employees who have not entered into settlement, they cannot claim the same benefit under the settlement and in this regard, he relied on the decision of Division Bench of Bombay High Court reported in Tata Consulting Engineers and Associates Staff Union Vs. Tata Consulting Engineers and Another, and submitted that Section 18(1) of the I.D. Act provides for entering into settlement otherwise then in a dispute and if the

settlement is arrived at, the and settlement are binding on the parties who have signed the settlement. Learned Senior Counsel referring to Section 18(1) submitted that, the settlement is confined only in respect of those workmen who have signed it and not in respect of any other workmen and in this case, he also submitted that, if the workmen of the respondent - Union accept the settlement, the Management has already stated that, it is ready to extend all the benefits to these workmen also.

12. He further submitted that, the interim order has to be understood as to the payments, which falls due subsequent to the said date. Further, he submitted that admittedly the workman of the respondent-union have not made any claim for the pay scale prior to 06.01.2005 or any other amount and the pay scale is also paid only from 06.01.2006. If the pay scale fixed under the settlement is not given to the members of the respondent union prior to 06.01.2006 and they have not made any claim for the same, it clearly means that, the interim order comes into effect only from 06.01.2006 and whatever is paid prior to the said date cannot be claimed. Referring to these circumstances, he further submitted that, the Industrial Tribunal while passing the impugned order on 22.09.2007 has erroneously observed that, the financial benefits covers the benefits under the settlement. The said finding of the Tribunal is not in consonance with the interim order dated 06.01.2006. The financial benefits or any other payments have to be paid only prospectively and not retrospective. The observation of the Tribunal to this effect amounts to modifying the earlier interim order and extending the benefit retrospectively in so far as ex-gratia is concerned.

13. On this submission he stated that, the Tribunal which has passed the order earlier has over looked the same and interpreted in a manner to give retrospective effect, without there being any justification.

14. Sri. K. Subba Rao, learned Senior Counsel appearing for the Union submitted that, the interim order dated 06.01.2006 is very clear in respect of payment of the service benefits. He referred to the interim order and submitted that, the pay scale, financial and service benefits under the settlement of 2002 and 200-5 are require to be paid prospective from the said date. It means that all amounts became due as on 06.01.2006 and were available for payment to all the workmen of the respondent - Union. In so far as the ex-gratia payment is concerned, though it is one time payment it fell due to all the employee including the workmen of the respondent - union. If that amount is due to them, they are entitled for the said amount and it cannot be treated as retrospective payment. This amount being ex-gratia amount, has become due to the employees. He also submitted that, there is no dispute that, the workmen of the respondent - Union have worked for the said period and are placed similarly. If they attended duty on par with the members who have entered into settlement this payment has to be made on par with the other employees and this payment is not a payment, which can be treated as retrospective payment.

15. In this regard, he also submitted that, the impugned orders are only interim

order and subject to final adjudication. He submitted that, in the industry if some employees are paid ex-gratia payment and some employees who have also discharged same duty are also entitled for the same financial benefits and it has to be interpreted, to mean that it includes all the benefits inclusive of ex-gratia amount, the impugned order should not be interfered in exercise of discretion power under Article 226 of the Constitution of India, as the substantial justice has been done to the members of the workmen. He also submitted, that, the Tribunal, which is an author of the earlier order has understood the earlier order and interpreted and has observed that, the financial benefits includes the payment of ex-gratia. In such circumstances, this Court should not interfere with the interim orders.

16. In this regard, he relied on a decision of the Apex Court reported in Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, Referring to paragraph 14 of the said judgment, he submitted that, High Courts do not, and should not, act as courts of appeal under Article 226 of Constitution. The power of the High Courts under Article 226 being purely discretionary though there is no limits can be placed upon the said discretionary but it must be exercised along recognised lines and not arbitrarily and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in the class of cases unless substantial injustice has ensued or is likely to ensue. He further submitted that, if there is no substantial injustice is ensured or shown, the orders should not be interfered in exercise of discretionary power under Article 226 of Constitution. He also submitted that, in this case a substantial justice has been done by extending financial benefit to the similarly placed workmen and it is being only an interim order, no interference should be made in exercise of discretionary power under Article 226 of Constitution of India. He further relied on another decision of the Apex Court reported in MR 1912 SC 1598 and relied on paragraph 12 of the said decision to point out that, the High Courts under Article 227 of the Constitution of India in exercise of supervisory power is required to use purely only in appropriate cases for the purpose of keeping the Subordinate Courts and the Tribunal, within the areas of their authority and not for correcting the mere errors.

17. By relying on above decisions, he submitted, that whether it is in exercise of discretionary power under Article 226 or in exercise of power under Article 227 of Constitution, the Court cannot lightly interfere with the orders much less with the interim orders particularly when the justice has been done and even if it is pointed out that there is any error, that by itself is no ground to interfere with the impugned orders.

18. In this regard, he submitted that, the Labour Court "which passed the order on 06.01.2006 categorically observed that, the financial and service benefits to be extended. The meaning of financial benefits has been understood by the Tribunal and has held that, the financial benefits includes the payment of ex-gratia amount which is paid to the other employees, whether it is paid prior or

subsequent to the interim order. The amount was required to be paid to all the employees who have rendered similar services, the Tribunal has extended the said benefit, it cannot be found fault with. He had also relied on a decision reported in Rai Bahadur Diwan Badri Das Vs. The Industrial Tribunal, Punjab, and submitted that, merely because some of the employees have not signed the settlement, the Management cannot deny the benefits which has accrued to the workmen who have signed the settlement and the Apex Court in the decision reported in Rai Bahadur Diwan Badri Das Vs. The Industrial Tribunal, Punjab, in the matter of H.B. Diwan v. Industrial Tribunal, Punjab, Patella and Ors. has observed that:

It is well known that both Industrial legislation and Industrial adjudication seek to attain similarity or uniformity of terms of service in the same industry existing in the same region, as far as it may be practicable or possible, without doing injustice or harm to any particular employer or a group of employees. That being so, we do not think the Tribunal was in error in holding "that in this matter of earned leave there should be uniformity of conditions of service governing all the employees in the service of the appellants.

19. That being so, the Tribunal cannot discriminate amongst the employees similarly placed. By these submissions, the Learned Senior Counsel for the respondent - Union submitted that, with the interim order which is passed earlier is explained by the Tribunal itself, and the Tribunal being the author of the earlier order has understood in the manner which is now explained in the impugned order dated 22.09.2007. It is now not open to understand in a different way.

20. The short point that arises for consideration is:

As to whether the Tribunal was justified in passing the order dated 22.9.2007 in consonance with the interim order passed on 6.1.2006?

21. Facts, which are not in dispute, are that:

About 452 workmen have entered into a settlement with the "Management on 29.7.2004, Under the settlement, certain benefits are extended to those workmen, who have signed the settlement. It is also not in dispute that, about 84 workmen have not agreed to the settlement and have raised a dispute before the Industrial Tribunal in terms of the reference including their demands and, the issue as regard to the validity of the settlement is also one of the issues, which is referred by the Government in Reference dated 23.4.2001. It is also not in dispute that, pending disposal of the reference, an application was filed by the respondent - Union seeking extension of the benefits, extended to the workmen, who have entered into the settlement and the said application was opposed by the Management. However, it is also stated at para-9 of objections as under:

9. The I Party is not entitled to seek interim award in terms of the Settlement signed by the workers. The I Party may either accept the said terms by signing it and get the benefits or the Hon'ble Tribunal may proceed to hold the same as

being fair and reasonable, as the final award as it is acceptable to a sizable number of workers,

This statement of the Management shows that the Management is not against the workers in the matter of extending the benefits under the settlement provided, 84 workers also must agree to the settlement.

22. The Tribunal by its order dated 6.1.2006 has passed an interim award inter alia, directing the Management to extend the pay scale, financial and service benefits under the settlement of 2002 and 2004 to the workers of the respondent - Union prospectively from the said day. It is clear that, from the date of the interim order, the Management has agreed to extend all the benefits, which is extended to the workers, who have signed the settlement. Thereafter, a statement is also made by the Management in W.P. No. 4919/2007 to the effect that, they have complied with the interim award dated 6.1.2006.

23. It is thereafter, a dispute has arisen as regard to certain ex gratia payments, which were extended to the workers, who have signed the settlement and which is not extended to the workers of the respondent - Union. The contention of the Management is that, the said amount does not fall due prospectively after the order dated 6.1.2006 whereas, the contention of the respondent - Union is that, this amount being due and available to be paid even in terms of the order dated 6.1.2006 and the workers of the respondent - Union are entitled.

24. It is in the light of the said dispute, another application was filed by the respondent - Union seeking the relief of payment of ex gratia amount. The Tribunal on interpretation of its own order has observed that, the Union is entitled for all the financial benefits covered, under the said settlement and has observed that the Management has not fully complied with the interim order dated 6.1.2006. No. doubt, prospectively from the date of order means, payments to be made on or from 6.1.2006. However, the Tribunal itself on interpretation of its own order, which had the benefit of hearing the parties and by appreciating the rival contentions, has interpreted the order by treating the financial benefits includes the payment of ex gratia amount. There are two components in the ex gratia amount under Clause 33 of the settlement. Component (A) is the amount payable for the period from 1.4.200-9 to 1.7.2004 whereas, component (B) is an amount payable after lapse of 12 months from the date of payment of component (A) in three instalments. It is not disputed by the Management that the workers of the respondent Union have also discharged the same functions and same duties and they claimed the interim benefit on par with the other workers.

25. In this case, the Management is not disputing the payment on par with the other workers, who have signed the settlement, except for the reason that the workers of the respondent - Union have not agreed. Even assuming that the workers are not agreeing to the terms of settlement), taking extreme case that, the dispute also fails, even in such circumstances, the question is, as to whether,

the workers are entitled for the said benefit or not. In terms of the statement made by the petitioner - Management in its objection to I.A. at para-9, as extracted earlier, the Management has agreed to extend the said benefit: to the workers of the respondent - Union, if they agree to the settlement or if the Tribunal holds that the settlement as fair and reasonable and acceptable. This shows that, irrespective of the dispute, if the settlement is accepted, the respondent workers are entitled, even if the reference fails, which results in acceptance of the settlement, then also the respondents are entitled for the benefit under the settlement.

26. It is in this background, if the background order of the Tribunal is looked into, it only shows that the payments, which otherwise could have been paid to the workers of the respondent - Union, if they had accepted the settlement, has been extended by the Tribunal. It is also not in dispute that, from 6.1.2006, the Management irrespective of the dispute is paying the amount. No doubt, the workers, who have entered into settlement and workers, who have not entered into settlement, they form class by themselves in terms of Section 18 Sub-section (1) of the Industrial Disputes Act. It is also reiterated by the Division Bench of the Bombay High Court. But that case applies only when the workers are not accepting the settlement and not agreeing with the terms. But in this case, though their dispute is as regard to the validity of the settlement, nevertheless, even in case of failure of the dispute, the workers, in my opinion, are entitled for the benefits under the settlement. Ultimately if the workers are entitled for the amount, the impugned order cannot be treated as an unjust order. No doubt, interpretation to the order dated 6.1.2006 may give rise to two opinions, one, that may be come prospective or may not become prospective. However, the understanding between the parties as regards to the extension of benefit under the settlement do indicate that the Management is not denying the benefits prospectively. However, only for the purpose of exgratia amount, the Management is seriously contesting the matter.

27. The Apex Court in Sangram Singh's case (supra) at para-14 has observed that, if no substantial injustice has ensued, normally, the High Court should not interfere with the orders in exercise of its discretionary power under Article 226 of the Constitution of India. In similar circumstances, the Apex Court in a decision reported in Rai Bahadur Diwan Badri Das Vs. The Industrial Tribunal, Punjab, has observed that, power under Article 227 being a superintending power, both the industrial legislation and industrial adjudication seek to attain similarity or uniformity of terms of service in the same industry existing in the same region, as far as it may be practicable or possible, without doing injustice or harm to any particular employer or a group of employers. This shows that the power under Article 227 being superintending power, could be interfered only if it is ensued that injustice has been caused. As observed above, if the payment under the settlement could be made in the event if there is acceptance of the settlement or if the reference ends with the upholding the fairness of the settlement, these workers are entitled and the Tribunal interpreting its own order

has held that, the financial benefits includes the exgratia payment, it is not a matter, which requires to be interfered in exercise of power under Article 226 or 227 of the Constitution of India. It is not pointed out by the learned Senior Counsel for the petitioner, as to how the interim order would cause injustice. It is also well-settled law that, when the main matter is pending and the interim order is always subject to the final result of the dispute, interfering with such interim orders, in ray opinion, would not be justifiable unless it is pointed out that, it is totally illegal or unjust order.

28. Learned Senior Counsel for the petitioner may be right in pointing out that, prospectively means, only the payment accruing after the order is passed, but that itself may not be a ground to interfere with the interim order. Mere error is not a ground even to interfere with the interim award. In this case, even the payments are made, it is not going to cause any harm, as the main dispute is pending. In such circumstances, merely because the workman is given certain benefits, that too, undisputedly in terms of the settlement, I find no reason to interfere with such interim award.

29. In these circumstances, the only observation that could be made ins that, all the payments made under the interim award are subject to final disposal of the dispute and accordingly, it could be adjusted.

30. Accordingly, the writ petition fails and is dismissed.