

(2004) 06 KAR CK 0020
In the Karnataka High Court
Case No : W.A. No's. 3689-94 of 1999

Mangalore Ganesh Beedi Works and Others	APPELLANT
Vs	
Workmen and Allied Beedi Factories Workers Association	RESPONDENT

Date of Decision : 03-06-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10 (1) (d), 12, 13, 18 (1), 3

Citation : (2004) 5 KarLJ 443 : (2004) 3 KCCR 2089 : (2004) 3 LLJ 228

Hon'ble Judges : S.R. Nayak, J;K. Ramanna, J

Bench : Division Bench

Advocate : K. Kasturi, for Kasturi Associates, for the Appellant; M.C. Narasimhan, for the Respondent

Judgement

S.R. Nayak, J.—In these appeals certain questions of general importance such as whether on an award of Industrial Tribunal a settlement entered into between the management and workmen u/s 18(1) of the Industrial Disputes Act, 1947 for short, "the Act" and accepted by vast majority of workmen can be set at naught by the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution on the ground that all workmen are not parties to the settlement; whether an Industrial Tribunal is obliged to apply norms applicable to industrial adjudication on a wage dispute while accepting the settlement and passing an award in terms thereof arise for consideration.

2. The appellants are Beedi industries and they being aggrieved by the judgment of the learned single Judge dated February 1, 1999 in W.P.Nos.7588-7593 of 1998 have preferred these writ appeals. The first respondent in each of these appeals, namely, Mangalore Ganesh Beedi Workers" and Allied Beedi Factory Workers Association, for short, "the Union" representing the workmen in the concerned industries preferred W.P.Nos. 7588-7593 of 1998 under Articles 226 and 227 of the Constitution seeking quashing of the awards passed by the Industrial Tribunal, Bangalore, dated October 27, 1997 in I.D. Nos. 13-18 of

1991. Learned single Judge by his order under appeal allowed the writ petitions, quashed the impugned awards and remanded the Industrial Disputes to the Industrial Tribunal for fresh disposal. The Management being aggrieved by the above order of the learned single Judge presented these appeals on May 24, 1999 and this Court on December 15, 1999 passed an interim order staying the operation of the order of the learned single Judge and that order has been in operation till now.

3. The Mangalore Ganesh Beedi Works, who is the appellant in W.A No. 3689 of 1999 is a well-established and well-known Beedi manufacturing concern in the State of Karnataka and it had the largest share of market in the country. Before 1972, the Mangalore Ganesh Beedi Works used to engage contract labourers for the manufacture of Beedis. After 1972, 5 more companies, namely, Vatapuresh Home Industries, Gurukripa Industries, Jyoti Home Industries, Deepak Enterprises and South Kanara Home Industries were formed as sister concerns. In the year 1979, the respondent-Union in each of the above industries had placed a Charter of Demands which was referred to the Industrial Tribunal, Bangalore u/s 10(1)(d) of the Act and the said reference came to be numbered as I.D. Nos. 13-18 of 1991 (old I.D.Nos. 61-66 of 1986). Those references were pending for adjudication before the Tribunal for quite a long time.

4. Majority of the workmen concerned being of the opinion that the respondent-Union was not able to secure relief to them and the dispute is pending for large number of years without resolution, resigned from membership of the Union and formed new Union called Mangalore Ganesh Beedi Works Employees Association (for short, the "new Union") and placed a Charter of Demands including the Demands covered by the references. On the demands thus placed by the new Union, the Management and the new Union, after negotiations, settled the disputes. At that stage, the new Union made an application before the Industrial Tribunal to implead itself as a party to the dispute, but, that application for impleading was opposed by the respondent Union and the Tribunal by its order dated April 15, 1996 rejected the impleading application. The said order of the Industrial Tribunal was assailed before this Court in Writ Petition No. 12400 of 1996. This Court while dismissing that writ petition on July 8, 1996 in paragraph 3 of the order observed thus:

"I make it clear that the order passed by the Tribunal or by this Court in this proceedings will not in any way affect the trial on that issue raised by the management and the Tribunal is free to deal with the case if any such issue is raised by the management."

After the above event, the Management and the new Union filed a joint memo before the Industrial Tribunal requesting the Industrial Tribunal to dispose of the references in terms of the settlement. The Industrial Tribunal after hearing the parties on the settlement and also recording the evidence let in by the respondent-Union passed the award in each of the Industrial Disputes in terms of the respective settlement filed before it. The main reason the Industrial Tribunal

has given for accepting the settlement is that the settlement has put an end to a long pending dispute and that a vast majority of workmen have accepted the settlement and none of the employees have come forward to complain that there was any force or coercion on the part of the new Union or the Management to accept the settlement against their will or wish. The Tribunal has also pointed out that the respondent-Union was not able to establish that the terms of the settlement are unjust or unfair or the same was actuated by mala fide. The awards were passed on October 27, 1997 in I.D No. 17 of 1991; October 20, 1997 in I.D. No. 18 of 1991, T.D. No. 13 of 1991, I.D No. 15 of 1991; October 21, 1997 in I.D No. 16 of 1991 and I.D No. 14 of 1991.

5. The respondent-Union being aggrieved by the awards passed by the Industrial Tribunal preferred W.P Nos. 7588 - 7593 of 1998 under Articles 226 and 227 of the Constitution. The writ petitions were opposed by the appellants by filing statement of objections. Learned single Judge by the judgment under appeal set aside the impugned awards on grounds that the-Tribunal has not given comparative details or figures with reference to the claim made by the respondent-Union, the terms and conditions agreed upon by the management and the new Union etc.; none of the employees who have accepted the settlement have been examined; the Tribunal did not consider whether the terms of the settlement between the Management and the new Union are fair and reasonable; the Management did not lead any evidence on the joint memo and that there is no evidence to show that the settlements entered into between the management and the new Union covered the disputes between the Management and the respondent-Union which are the subject-matters of references to the Industrial Tribunal.

6. We have heard Sri K. Kasturi, learned senior counsel for the Management and Sri M.C. Narasimhan, learned senior counsel for the respondent-Union. Sri Kasturi would contend that the learned single Judge has exceeded jurisdiction vested in the High Court under Articles 226 and 227 of the Constitution in setting aside the impugned awards passed by the Industrial Tribunal which were based on settlements entered into between the Management and the workmen. Sri Kasturi would point out that since the settlements were accepted by vast majority of workmen and those settlements brought about peace in the industry, there was no justification for the learned single Judge to quash the awards. Shri Kasturi would also contend that the learned single Judge has acted illegally in applying norms applicable to Industrial adjudication. Shri Kasturi would also contend that the judgment of the learned single Judge cannot be sustained in the light of the judgments of the of Apex Court in *Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others*, , *Tata Engineering and Locomotive Company Limited Vs. Their Workmen*, , *K.C.P. Limited Vs. Presiding Officer and Others*, and several other judgments of the Supreme Court . Shri Narasimhan, learned counsel for the respondent-Union, on the other hand, would support the order of the learned single Judge.

7. Having heard the learned counsel for the parties, the question that arises for decision is whether learned single Judge has acted legally and within the parameters of the powers of High Court under Articles 226 and 227 of the Constitution and is justified in setting aside the impugned awards for reasons stated by him in the impugned judgment.

8. As a preface to the consideration of the above question, the facts which are not in dispute may be noted first. Although the disputes were pending between the Management and the workmen in all the appellant units from 1979 onwards and though the appropriate Government referred the disputes to the Industrial Tribunal as far back as in the year 1991, no solution could be found for the simmering discontentment and frustration among the workmen of the appellant industries. In the circumstance, the frustrated workmen realising that the respondent-Union was not capable of securing reliefs to their members and in fact the Union was only interested in dragging on the dispute forever for its own undisclosed reasons, resigned from the membership of the respondent-Union and formed a new Union with an intention to find some immediate solution to the long-standing dispute. That led to the new Union placing new Charter of Demands before the Management and that ultimately resulted in settlement u/s 18(1) of the Act as already noticed above. At this juncture, it needs to be highlighted that in Writ Appeal No. 3690 of 1999 all the 33 workmen in the establishment have accepted the settlement; in Writ Appeal No. 3691 of 1999, 37 employees out of 41 employees have accepted the settlement; in Writ Appeal No. 3692 of 1999, 141 employees out of 142 have accepted the settlement; in Writ Appeal No. 3693 of 1999, 67 employees out of 82 have accepted the settlement; in Writ Appeal No. 3689 of 1999, 320 employees out of 328 have accepted the settlement and in Writ Appeal No. 3294 of 1999, 120 employees out of 188 have accepted the settlement. The employees concerned have accepted the settlement without any protest or demur. There is absolutely no evidence, whatsoever, adduced by the respondent-Union to show that the workmen concerned accepted the settlements due to threat, coercion etc. The vast majority of the employees in each of the concerns have accepted the settlement and they have also received the benefits under the settlements. It also needs to be noticed that none of the workmen who have accepted the settlement subsequently came forward to complain that they had accepted the settlements due to threat, coercion etc.

9. The policy of the Industrial Disputes Act is to secure and preserve good relations between the employers and their workmen and to maintain industrial peace and harmony. It is with this object that Section 3 of the Act contemplates the establishment of the Works Committee whose duty it is to promote measures that secure and preserve the amity and good relations between the employers and the workmen. If the Works Committee is unable to settle the disputes arising between the employers and its workmen, Conciliation Officer and the Boards of Conciliation offer assistance to the parties to settle their disputes. Sections 3, 4, 5, 12 and 13 of the Act refer to the working of the conciliation machinery

contemplated by the Act. It is only when the conciliation machinery fails to provide the settlement between the parties that the Act contemplates compulsory adjudication of the Industrial disputes by Labour Court and Industrial Tribunals as the last alternative.

10. The Act was designed to provide a self-contained code to compel the parties to resort to industrial arbitration without prescribing statutory norms varied and variegated industrial relational norms so that the fora created for resolution of disputes may remain unhampered from any statutory control and devise rational norms keeping pace with improved relations reflecting and imbibing socio-economic justice. If this is the underlying object behind enactment of the Act, the Court by interpretative process must strive to reduce the field of conflict and expand the area of agreement to show its preference for upholding agreements sanctified by mutuality and consensus in larger public interest, namely, to eschew industrial strife, confrontation and consequent wastage.

11. One of the avowed objects of industrial adjudication is to encourage settlement between the parties, because, that is one of the effective modes of resolving industrial disputes. The dispute in this case was pending for more than two decades and the respondent-Union for one or the other reason was not capable of securing any relief to the frustrated workmen. Under the circumstance, the workmen came out of the respondent-Union by resigning from the membership of the respondent Union and formed new Union, negotiated with the Management regarding their terms and conditions of services and entered into a settlement giving a quietus to the long-standing dispute between the warring Management and the workmen.

12. The settlement is only to step up in labour's progressive ascent to the goal of their ultimate ideal, namely, a living wage with realisation of the other aspirations including partnership with employer. In the words of Koushal, J. speaking for the Supreme Court in the case of Tata Engineering & Locomotive Co. Ltd. (supra) held Tata Engineering and Locomotive Company Limited Vs. Their Workmen, :

" 10.... If the settlement had been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number workers were not parties to it or refused to accept it, or because the Tribunal was of the opinion that the workers deserved marginally higher emoluments than they themselves thought they did. A settlement cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication."

13. A settlement is the result of collective bargaining and when a recognised Union negotiates with an employer, the workers as individuals do not come into the picture and it is not necessary that such individual workers should know the

implications of the settlement since a recognised Union which is expected to protect the legitimate interests of the labour enters into a settlement in the best interests of the labourers,

14. In *Mico Employees' Association Vs. State of Karnataka*, BOPANNA, J. speaking for this Court has gone to the extent of saying that even if the settlement is technically not in accordance with law, it should not be interfered with in judicial review where it is between the management and the majority of workmen who have taken benefit under the settlement and thereafter resumed normal production and industrial peace, unless it is shown that the terms of the settlement are onerous and against the interests of the majority of workmen.

15. A Division Bench of Andhra Pradesh High Court in *The Management of Agnigundala Lead Project Hindustan Zinc Ltd. and Others Vs. Hindustan Zinc Workers Union and Another*, held that where management is guilty of dishonouring its commitments under a settlement, whether it is called the "understanding" or "minutes of discussions", after taking full advantage of the terms thereof, and having trapped the Union into an agreement and after taking advantage of that agreement it could not be said that the settlement was not binding on the management. In that case, the Andhra Pradesh High Court reprimanded the conduct of the management in trying to resile from the settlement so entered into.

16. The question of justness and fairness of a settlement should be examined with reference to the situation as it stood on the date on which it was arrived at. For instance, if a settlement is arrived at between the parties during the pendency of adjudication proceedings, the possibility of an adverse decision operates as a positive force in favour of deliberate and careful effort by both parties to settle their disputes through direct negotiations. There may also be the probability of the workmen having to refund some amounts to the employer in the event of award going in favour of employer. A settlement, therefore, is not to be seen in bits and pieces by holding some parts good and acceptable and others bad. Unless, it can be demonstrated that the objectionable portion is such that it completely out-weighs all the other advantages gained, the Court will be slow to hold a settlement as unfair and unjust.

17. In *Workmen of Hindustan Lever Ltd. v. Hindustan Lever Ltd.*, speaking for the Supreme Court DESAI, J. exhorted that:

"..... the Courts by interpretative process must strive to reduce the field of conflict and expand the area of agreement and show its preference for upholding agreements sanctified by mutuality and consensus in larger public interest, namely, to eschew industrial strife, confrontation and consequent wastage".

18. When any Trade Union enters into some settlement of an industrial dispute with the employer, the presumption is that it has acted in the best interests of its members. Therefore, when settlement of an industrial dispute is reached

between the sponsoring Union, particularly when it commands majority, it should be prima facie considered to be in the best interests of the employees of the concerned establishment or industry even of the public body. Such presumption is not assailable in the absence of any oblique motive behind it. But mere allegations of mala fide or bad faith or oblique motive in this regard would not be sufficient as it is easier to allege than to prove them. The allegation of oblique motive even at the stage of pleadings should be based on some concrete materials and cannot be vague or scanty.

19. The Supreme Court in *Herbertson's case* (supra), observed thus:

"The numerical strength of the members of the 2nd respondent, who are workers of the Company, would also have an important bearing as to whether the settlement accepted by the majority of the workmen is to be considered as just and fair."

20. The Supreme Court in the same judgment, further observed:

"Besides, the settlement has to be considered in the light of the conditions that were in force at the time of the reference. It will not be correct to judge the settlement merely in the light of the award which was pending appeal before this Court. So far as the parties are concerned there will always be uncertainty with regard to the result of the litigation in a Court proceeding. When, therefore, negotiations take place which have to be encouraged, particularly between labour and employer in the interest of general peace and well-being, there is always give and take. Having regard to the nature of the dispute, which was raised as back as in 1968, the very fact of the existence of a litigation with regard to the same matter which was bound to take some time must have influenced both the parties to come to some settlement. The settlement is to be taken as a package deal and when the labour has gained in the matter of wages and if there is some reduction in the matter of Dearness Allowance so far as the Award is concerned, it cannot be said that the settlement as a whole is unfair and unjust.

... The question of adjudication has to be distinguished from a voluntary settlement. It is true that this Court has laid down certain principles with regard to the fixation of dearness allowance and it may be even shown that if the appeal is heard the said principles have been correctly followed in the award. That, however, will be no answer to the parties agreeing to a lesser amount under certain given circumstances. By the settlement, labour has scored in some other aspects and will save all unnecessary expenses in uncertain litigation. The settlement, therefore, cannot be judged on the touchstone of the principles which are laid down by this Court for adjudication".

21. Thus it is quite clear that the settlement cannot be judged on the principles of adjudication by Industrial Courts.

22. It is borne out from the records that out of 814 employees working in six

appellant industrial units, as many as 718 have accepted the settlements and they have also received are in the process of receiving the benefits of settlements. It is pointed out that under the settlements workmen have gained substantially, that is to say, the workmen have got increase in salary between Rs. 500 to Rs. 1500 and they were also paid ex gratia payments of amounts ranging from Rs. 1500 to Rs. 26,500 because of the pendency of the disputes for considerable time. It was also pointed out that the benefit of ex gratia payment was also extended to persons who have retired during the pendency of the disputes. Admittedly, the workmen who have accepted the settlements have given declarations and also sworn to affidavits stating that they abide by the settlements and they are not interested in continuing the disputes before the Industrial Tribunal. One of the contentions urged by Sri Narasimhan to assail the impugned awards is that the settlement was reached between the new Union and the Management after the Industrial Tribunal completed the recording of evidence of the parties, that is to say, at a belated stage of the proceedings; therefore, the settlements could not be regarded as the outcomes of honest collective bargaining between the Management and their workmen; the settlements are tainted by mala fide and influenced by extraneous considerations.

23. The above submission of the learned senior counsel is not acceptable to us. In *The Sirsilk Ltd. and Others Vs. Government of Andhra Pradesh and Another*, the Supreme Court held that where the parties arrived at a settlement after the submission of the award to the appropriate Government for its publication but before the date of its publication, if the parties informed the Government about such settlement, the Government should not publish the award. The Supreme Court held that where a settlement is arrived at between the parties to dispute before the Tribunal after the award has been submitted to the Government but before publication, there is, in fact, no dispute left to be resolved by the publication of the award. In such a case, according to the Apex Court, the award sent to Government may very well be considered to have become infructuous and the Government should refrain from publishing such an award because no dispute remains to be resolved by it.

24. Since as many as 718 out of 814 total workmen serving in six appellant units had accepted the settlements, it is not appropriate for this Court to interfere with the awards passed in terms of such settlements if we keep in mind the avowed objectives of the Act. In *Amalgamated Coffee Estates Ltd. and Ors. v. Their Workmen and Ors.* 1965 II LLJ 110 (SC) where number of Coffee, Tea and Rubber estates in South India were parties to the award given on September 15, 1956 by the Special Industrial Tribunal for Plantations, Coimbatore pending appeals by the managements, before the Supreme Court and the same was pending, the subject matter of the awards were settled between most of the Managements and most of their employees represented by certain Unions. When an application was made before the Supreme Court to dispose of the appeal in terms of such settlement, it was opposed on behalf of some of the employees that the Unions representing them were not parties to the settlement and hence

the appeal should be decided on merits, so far as they were concerned. The Supreme Court did not accede to the request of those employees. The Supreme Court, on the other hand, called for a finding from the Industrial Tribunal, Madras, on the following issues at p. 111:

"In view of the fact that admittedly a large number of workmen employed by the appellants have accepted payments consistently with the terms of the agreements set up by the employers in their present petition, is it shown by the respondents that the said agreement is not valid and binding on them?"

25. The Industrial Tribunal, after conducting enquiry, returned a finding to the Apex Court that the terms of the settlement were fair and reasonable. The Supreme Court accepted the above finding of the Industrial Tribunal and disposed of the appeal in terms of the settlement. It needs to be noticed that the above appeal was preferred by the estate which was not a party to the settlement. Nevertheless, the application of the appellant estate for deciding the appeal preferred by it in terms of the settlement was allowed in view of the fact that the units which represented the employees of the appellant estate were parties to the settlement with other estates and that they did not oppose the application.

26. The other contention advanced on behalf of the workmen is that the Management has not adduced any satisfactory evidence to show that the terms of settlement are fair and reasonable and, therefore, learned Judge is Justified in not accepting the terms of settlement, legal and binding. In considering what is fair and what is reasonable, the Court has necessarily to take into account various factors under which the disputes are raised and the circumstances under which the parties settled the disputes. It is pointed out that in this case the demands raised by the respondent-Union on behalf of its member workmen were kept in cold storage for decades and the workmen concerned were totally frustrated and prejudiced. The situation noticed above led (sic) the vast majority of workmen resign from the membership of respondent-Union and to formation of a new Union. The new Union submitted a new Charter of Demands inclusive of those demands covered by references and after negotiation entered into a settlement with the Management. It is pointed out that the new Union has agreed to the settlement only after taking into consideration all relevant factors and the best interest of the workmen. It is also highlighted in the pleading of the Management that the advantages gained by the workmen concerned by entering into the settlement, if the Court were to keep in mind the context of the settlement and the undoubted authority of the new Union to bargain with the Management on behalf of the vast majority of the workmen, the best interest of the workmen, the Court would not find any objection to the impugned awards which are based on the settlements. If the Trade Unions which are the parties to the settlements considered after taking all factors into consideration that something is better than nothing or that half a bread is better than no loaf, it would be unfair for the Court, particularly sitting on the writ side to condemn the

settlement either as unfair or unreasonable or not amicable.

27. It is well settled that the Court is not entitled to scan a settlement in bits and pieces and hold some parts good for the workmen and some other parts not good or not so good for workmen. The Court should look at the settlement as a whole. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court should be slow to hold a settlement as unfair and unjust. In *Tata Engineering and Locomotive Co. Ltd. v. Workmen* (supra), the Supreme Court held that a settlement cannot be weighed in any golden scale and the question whether it is just and fair had to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication. It is held that if the settlement has been arrived at by vast majority of workmen with their eyes wide open and was also accepted by them in its totality, it must be presumed to be fair and just and not liable to be ignored merely because small number of workers were not parties to it or refused to accept it.

28. According to us, the burden of proof that the terms of settlement are unfair or unreasonable lies on the respondent-Union and not on the Management. We say this because, settlements are accepted by vast majority of workmen and they have received the benefits and advantages of" the settlement without any demur and protest. The majority of workmen have also not complained to the Industrial Tribunal against the terms of settlement. In the context, it is reasonable to presume that the terms of settlement are fair, reasonable and amicable to the workmen concerned. If the respondent-Union contests such a presumption, it is for the respondent-Union to lead evidence to show that the settlements are unfair and unreasonable or they were entered into between the parties for some extraneous considerations and not in the interest of the workmen concerned. The respondent Union has utterly failed to discharge that burden in the instant case.

29. In conclusion, we are of the considered opinion that none of the reasons stated by the learned single Judge could be a valid and tenable reason to interfere with the awards passed by the Industrial Tribunal basing on the settlements entered into between the Management and their employees. The judicial review power vested in this Court under Article 226 of the Constitution should be exercised in such a way as to advance the objectives of the law and not to thwart those objectives. Technicalities cannot be permitted to hijack the divine ratham of justice. The parties should win or lose on substantive grounds and not on technical tortures. The relief to be granted by the High Court must be such as could be considered permissible in law and worked out by application of legally recognized principles. The decision must have legitimacy of legal reasoning and should not incur the criticism of lacking the objectivity of purpose and rational and legal justification.

30. In the result and for the foregoing reasons, we allow Writ Appeal No. 3689 to 3694 of 1998, set aside the judgment of the learned single Judge dated February

1, 1999 and dismiss Writ Petition No. 7588 to 7593 of 1998, however, with no order as to costs.