
(1982) 07 KL CK 0005
In the High Court Of Kerala

Manoharan Nair

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 13-07-1982

Acts Referred:

Industrial Disputes Act, 1947 — Section 18, 19, 2

Citation : (1983) 1 LLJ 13

Hon'ble Judges : M.P. Menon, J

Bench : Single Bench

Judgement

M.P. Menon, J.—Two trade unions and two workmen of the H.M.T. establishment at Kalamassery, are the petitioners herein, and the prayer is to quash Ext. P3 settlement and direct the conciliation officers of the State to initiate conciliation proceedings in respect of the charter of demands annexed to Ext. P2. The facts, as disclosed by the pleadings and the documents produced, are the following:

2. On 2.11.1978, the management of H.M.T. entered into a long-term conciliation settlement with all the then existing eight trade unions of the establishment. That settlement is Ext. P1, and Clause (6) thereof provided:

This settlement is without prejudice to the union's right to take up the issues of revision of minimum wages and the enhancement of the rate of neutralisation of D. A. beyond Rs. 1.30 per point with the Government of India and if the Government of India agrees to the improvement in the minimum wages and or the DA neutralisation rate, the management agrees to make necessary modification to the minimum wages and DA neutralisation rate and consequential adjustment in the wage structure in consultation with the unions.

Clause (17) provided:

This settlement shall be operative and binding on both the parties upto 30.6.1981 and will thereafter continue to remain binding on them until it is terminated in writing by either party by giving two months notice of their intention to do so.

It appears that after the settlement, there was merger of some of the unions and only six of them survived.

3. The unions wanted the Central Government to consider the question of minimum wages and DA as provided for in Clause (6), but the Government was not favourably disposed. The workmen went on strike on from 26.12.1980, but that was called off on 16.3.1981. A conference was convened at New Delhi, when the Central Government, instead of conceding the claim for minimum wages, neutralisation and restructuring of wages on that basis, made a counterproposal to pay a lump sum of Rs. 700 to all the workmen and to grant an extra allowance of Rs. 25/- per mensem from 1.1.1981, on condition that they agreed to extend the period of operation of Ext. P1 settlement. The unions rejected the proposal; they stood firm on the demands made under Clause (6) of Ext. P1. The Regional Joint Labour Commissioner convened another conference on 2.7.1981, and here again the management offered the "Delhi terms". This conference also failed. The Additional Labour Commissioner of the State called another conference on 7.7.1981, and at this conference, three of the unions agreed to accept the Central Government's proposal, and to extend the operation of Ext. P1 till 31.12.1982. Despite the objections of the other unions, Ext. P3 settlement was drawn up on that day incorporating the aforesaid terms, and the Additional Labour Commissioner countersigned it with the following endorsement:

The H.M.T. Employees Federation, H.M.T. Essential Employees Union and H.M.T. Workers Congress (I) did not sign the settlement even though their representatives attended the conference. I am convinced, on the basis of the verification report given by the Dy. Registrar of Trade Unions, that the unions signing this agreement represent the majority of the workers and the terms of this settlement are fair and reasonable.

4. The challenge to Ext. P3 is now raised by two of the unions who had declined to accept its terms on 7.7.1981. On 29.7.1981 one of them (H.M.T. Employee's Federation) sent Ext. P2 letter to the Labour Commissioner purporting to terminate Ext. P1 settlement u/s 19(2) of the I.D. Act, and enclosing a charter of demands of the same date, addressed to the management. The contention of the petitioners is that Ext. P3 is inoperative and void, and that Ext. P1 having been terminated by Ext. P2, a fresh dispute had arisen in respect of the demands aforesaid and the conciliation officers are bound to take action for resolving it.

5. The first contention raised for attacking Ext. P3 is that the conciliation officer erred in holding that the union representatives who consented to its terms on 7.7.1981 represented a majority of the workmen in the establishment. Obviously, this Court cannot go into such a disputed question of fact in the present proceedings. The files made available by the Government Pleader disclose that before making the endorsement, there was a verification with reference to the membership registers of the three unions, and that they were found to represent more than 1600 workers out of a total of 2400. That apart, I have not been referred to any of the provisions of the Industrial Disputes Act and

the Rules framed thereunder obliging a conciliation officer to countersign only those settlements where the consenting union officials represent a majority. So far as I know, a settlement made with a minority will bind all the workmen of the establishment when it is countersigned by the conciliation officer, unless it is established that the dispute related to some special section of the workers with a special kind of demand, and that the consenting parties were in no way representative of such workmen. In other words, only a collusive settlement, designed to defeat certain kinds of claims, and entered into with those who could not speak for even a small section of the workmen interested, could be an exception to the rule (See *Ramnagar Cane and Sugar Co. Ltd. Vs. Jatin Chakravorty and Others*, Such is not the case here.

6. The conciliation officer has recorded that he was satisfied that the terms of Ext. P3 were fair and reasonable. The Additional Labour Commissioner is high up in the hierarchy of conciliation officers, and it requires more than a mere assertion to doubt his statement. The extension of Ext. P1 terms, with a lump sum payment and an added allowance of Rs. 25 per mensem, was certainly a matter of benefit to the workmen in general; and what is more important is that the unions which accepted the terms were not politically affiliated to the party controlling the Central Government, to suspect that they had succumbed to unfair terms on extraneous considerations. It cannot be said that Ext. P3 was sham, or vitiated by want of bona fides.

7. The decision in *Monthly-rated workmen of Peirce Leslie and Co. Ltd. Vs. Labour Commissioner and Others*, is also of no assistance to the petitioners, since that was a case where conciliation was initiated with two unions on the party array, but was concluded without notice to one of them. In the present case all the unions had been invited to the conciliation talk and all of them had participated in the deliberations till the last of moment of actually signing the settlement. The petitioners, were invited for the conference of 7.7.1981 and their representatives had taken part in the discussions.

8. The only other point is about the jurisdiction of the conciliation officer. It is argued that the dispute was confined to matters mentioned in Clause (6) of Ext. P1, and that the officer's jurisdiction was to resolve only that dispute, and not to hind the workmen on other matters covered by Ext. P1. This is a very delicate ground. It is possible, at least in certain cases, that a dispute is raised about something, and the final settlement requires solution of other disputes also. Workmen may demand wage increase and go on strike and during the strike, the management may take disciplinary action against some of the activists for alleged intimidation of loyal workers; the dispute may ultimately be resolved only if the management agrees at the conciliation talks to drop the disciplinary proceedings. It will be too much for any court to hold that the conciliation officer would be incompetent to countersign the final settlement providing also for the withdrawal of the disciplinary proceedings. u/s 2(k) of the I.D.Act, every dispute or difference between management and workmen is an industrial dispute. There

is no manner prescribed for raising an industrial dispute and bringing it into existence. Fresh disputes may arise by escalation during the pendency of another dispute. The conciliation officer is certainly competent to deal with all disputes brought to his notice, whether existing at the commencement, or cropping up during the pendency of proceedings. As to the facts of the present case, it is admitted that negotiations had commenced on the Central Government's counter-proposal before July, 1981. Those proposals were considered on 27.7.1981 also. The substance of the matter was that there was difference of opinion between the parties about the claims of the workmen and the manner or extent to which the employer was prepared to meet them. They had held protracted negotiations on [his difference or dispute before Ext. P3 was signed on 7.7.1981. It cannot, therefore, be said that there was no dispute at all about extending the terms of Ext. P1, though such a dispute was probably not there in the initial stages.

9. I am, therefore, unable to hold that the conciliation officer had no jurisdiction to countersign Ext. P3 and give it the extended operation conceived of in Section 18(2).

10. The Charter of demands dated 29.7.1981 (annexed to Ext. P2) seeks revision of wages, allowances and other service conditions governed by Exts. P1 and P3. If Ext. P3 continues to operate as the result of the extension given to it under Ext. P3 with the modifications noticed, and if Ext. P3 is valid, as I have held, the other unions are precluded from raising fresh disputes regarding those service conditions till 31.12.1982. In this view, the conciliation officer could have no jurisdiction to take up for consideration the demands made on 29.7.1981, and there is no question of this Court compelling him to do so. Ext. P2 does not also appear to be a valid termination of Ext. P1, because u/s 19(2), the workers have to give notice of termination to the management, and not to the Labour Commissioner, as attempted in this case. u/s 19(7), only unions representing the majority of the workmen could give such notice, and on the finding recorded in Ext. P3, it is doubtful whether this requirement of a valid termination is also satisfied. The second prayer in the writ petition cannot also be granted under these circumstances.

11. The original petition is accordingly dismissed. No costs.