

(1966) 12 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 1679 of 1964

Maria Soams

APPELLANT

Vs

Commonwealth Hosiery Factory, Balmatta and Others

RESPONDENT

Date of Decision : 01-12-1966

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1) (d), 36

Citation : (1967) 14 FLR 434 : (1968) 2 LLJ 438 : (1967) 1 MysLJ 453

Hon'ble Judges : B.M. Kalagate, J;A.R. Somnath Ayyar, J

Bench : Division Bench

Judgement

Per Somnath Ayyar, J.—The source of this petition is a dispute between the Common-wealth Hosiery Factory in Mangalore, and its workmen, which was referred for adjudication to additional industrial tribunal, Bangalore, under S. 10(1)(d) of the Industrial Disputes Act. After the receipt of this reference, the tribunal issued notices on 24 March, 1964, to two unions, the South Kanara General Labour Union, which will be referred to as the existing union in the course of this order, and the Karnataka Handloom and General Workers" Union, which will be referred to as the new union.

2. It is not disputed before us that the existing union was the older union and that the new union was formed later.

3. By the notices issued by the tribunal to these two unions, it was intimated that the office-bearers of these unions should appear before the tribunal on 5 April, 1964, so that issues might be settled. The management was also informed that it should produce its counter-statement.

4. Meanwhile, a claim statement had already been produced on behalf of the new union on 19 March, 1964. On 30 June, 1964, a settlement was reached and recorded between the existing union and the management, and that settlement was produce before the tribunal on 2 July, 1964. That settlement was transmuted into an award of the tribunal on 14 July, 1964.

5. The petitioner before us, who is one of the workmen and who is also the assistant secretary of the new union, calls in question this award. The challenge to the award is that it was made in opposition to the contention raised by the new union that the settlement, should not be made the foundation of an award, and that the settlement was accepted by the tribunal without affording an opportunity to the new union to state its point of view. It was pointed out to us that, after the new union produced its statement of claim on 19 March, 1964, it addressed a communication to the tribunal on 3 June, 1964, and again on 13 July, 1964, that the reference should be decided on its merits and not on the basis of the settlements reached between only one union and the management. It was, therefore, stated that it was the duty of the tribunal to discard the settlement and hear the new union in regard to the question whether the settlement should be made the basis of an award.

6. Sri Jagannatha Shetti, for the petitioner, contends that, in consequence of the production of the statement of claim by the new union on 19 March, 1964, and on the registration of the protest to the acceptance of the settlement, which were made on two occasions in June and July 1964, the new union had virtually entered representation before the tribunal under S. 36 of the Industrial Disputes Act on behalf of those workmen who were its members. So, he contended that a settlement reached only between the union of which the other workmen were members, and the management, could not; in law, constitute the foundation for a proper award.

7. During the course of the argument, one of the questions debated was that all the workmen of the industry were parties to the reference, as explained by the Supreme Court in *Hotel Imperial, New Delhi v. Chief Commissioner, Delhi, and others* [1958 I L.L.J. 92]. So, it was contended by Sri Jagannatha Shetti that all that was necessary for the members of the new union was to seek permission for representation through their own union under S. 36 of the Industrial Disputes Act, and that precisely was what was done by them, when they produced their statement and addressed two other communications subsequently. Countering the argument advanced by Sri Ramachandran on behalf of the management that the new union or its members had not made any application for getting themselves impleaded as parties to the reference, which they should have done, in accordance with the elucidation made by the Supreme Court in *Hochtief Gammon Vs. Industrial Tribunal, Bhubaneshwar, Orissa and Others*, , Sri Shetti contended that it was scarcely necessary for the workmen of the new union to get themselves impleaded since they were already on the record as forming part of the composition of the workmen of the industry.

8. The real question on which we have to adjudicate in this writ petition is, whether we should denounce the award made by the tribunal as not having been properly made by it. It is now a well-settled rule and principle that an award can be based even upon a settlement entered into between the management and one of the two unions, if there be more than one, where the settlement appears

to be fair and reasonable. The principle of the decision in *Ramnagar Cane and Sugar Co. Ltd. Vs. Jatin Chakravorty and Others*, which governed a settlement in the course of a conciliation, was, in effect, extended by the Supreme Court to a settlement which was sought to be made the foundation of an award, in *Amalgamated Coffee Estates; Ltd. v. their workmen* [1965 II L.L.J. 110]. That was a case in which, in the appeals preferred to the Supreme Court under Art. 136 of the Constitution, a settlement was reached between only some of the unions and the employers. The endeavour to seek a modification of the impugned award in accordance with that settlement was resisted by the unions which were not parties to the settlement, in consequence of which, the Supreme Court invited a finding from the concerned industrial tribunal on the fairness and reasonableness of the settlement reached. On receipt of the finding that it was fair and reasonable, the Supreme Court modified the award in terms of the settlement. The Supreme Court observed that the settlement, which appeared to be fair one, should form the basis of the decision in the appeals. The observation in the course of the judgment that even the estates which were not parties to the settlement were prepared to aside by it, does not, to any extent, take away the effect of the enunciation that a fair settlement, to which some of the unions were not parties, could still be made the basis of an award under the Act.

9. The postulate placed before us, at one stage, by Sri Jagannatha Shetti that there can be no adoption of a settlement reached in the course of a proceeding concerning a reference under S. 2(d), and that, notwithstanding a settlement properly reached, the industrial tribunal was under a duty to make an adjudication upon the question before it. On merits, must be negated on the basis of at least two pronouncements by the Supreme Court in *The State of Bihar Vs. D.N. Ganguly and Others*, and *The Sirsilk Ltd. and Others Vs. Government of Andhra Pradesh and Another*, . It was explained in these two cases that, although the Industrial Disputes Act does not expressly authorize the recording of a compromise in the same way in which rule 3 of order XXIII of the CPC empowers, it would be unreasonable to suggest that despite a proper settlement reached between the parties to a dispute, there should be an adjudication on merits. The authoritative elucidation made in there two cases was that, if such settlement was reported to the tribunal, the tribunal would not exhibit any reluctance to make the settlement the basis of its award.

10. So the true question is, whether we should pronounce against the validity of the settlement reached between the existing union and the management, on any one of the many grounds which were placed before us during the argument. It we reach the conclusion that the settlement was properly reached, and that it was considered by the tribunal to be a fair and reasonable one, what should follow is that the award made by the tribunal is impervious to the criticism that there was no adjudication on merits, and that it was perfectly permissible in that event, for the tribunal to make an award in terms of the settlement.

11. Now, in the case before us, the settlement was reported to the tribunal on 2

July, 1964. So the tribunal made its award in terms of it on 14 July, 1964. The tribunal stated in the course of its award that it was satisfied that the terms of the settlement were fair and reasonable to both sides. It is obvious that the tribunal satisfied itself about the reasonableness of the settlement before it made an award in its terms.

12. But it was urged that before an award could be made in that way, it should have been properly reached between the workmen and the management, and that such was not the attribute of the settlement. The argument constructed was that, time and again, the new union had been submitting to the tribunal that the existing union and some only of the workers of the industry had been attempting to reach a settlement without consulting the new union, and that the tribunal should not render its decision on the basis of such settlement. In support of this submission, it was argued, as already observed, that, in addition to the production of the statement of claim on 19 March, 1964, the new union addressed two communications to the tribunal once on 3 June, 1964, and again on 13 July, 1964, intimating its protest against the settlement being made the foundation of the award. Sri Shetti presented the argument that, by this process, the new union had entered appearance before the tribunal on behalf of the workmen who were members of the new union, and that the representation thereafter could only be made at all relevant points of time by the new union, and by no other.

13. Depending on the decision of the High Court of Madras in *Workers employed in 32 Textile Mills in Coimbatore Vs. Management of Dhanalakshmi Mills Ltd., Tiruppur and Others*, , it was pressed that the award was open to the reproach that it was based upon a settlement reached only between some of the workmen and the management, and so, was invalid. It should be observed that this decision of the High Court of Madras stands weakened by the pronouncement of the Supreme Court in *Amalgamated Coffee Estates. Ltd. v. Their workmen* [1965 II L.L.J. 110], from which it emerges that the nonparticipation of another union in the settlement reached between the management and one of the unions, becomes irrelevant if the settlement is otherwise fair and reasonable.

14. However that may be, it was contended very forcefully by Sri Shetti that before the tribunal reached the conclusion that the settlement was fair and reasonable, as it indeed did, there was a duty on the part of the tribunal to hear the new union which had intervened on that question. The omission to do so, and the rendering of the award without hearing the new union, it was suggested, vitiated the award and made it unenforceable. So, what should really be considered by us is, whether there was any transgression of any such duty on the part of the tribunal.

15. Now, after the issues were settled by the tribunal after despatch of notices to both the new and existing unions, the tribunal posted the matter to at least eight dates of hearing between 8 May, 1964 and 2 July, 1964. Although the new union did produce a statement of claim on 19 March, 1964, it was informed by the

notices issued by the tribunal on 24 March, 1964, that issues would be settled on 5 April, 1964. It does not appear that the new union appeared before the tribunal again on any date of hearing, including 5 April, 1964 when the tribunal proposed to settle the issues. Sri Shetti made no endeavour to assert that there was any such appearance before the tribunal by the new union on any one of those eight dates of hearing, or even on the date on which the issues were settled. All that the new union did was to produce a statement of claim in March, 1964 and to address two letters one in June, and the other in July 1964 and although in those two letters, the new union informed the tribunal that their stand was that the settlement reached between only the existing union and the management should not be made the basis of the award, it made no attempt or endeavour to make any representation on behalf of the workers, who were its members; under S. 36 of the Industrial Disputes Act. There was no representation by that union on behalf of those workmen on any one of those dates of hearing, as we can gather from the material on record.

16. Now, the most important landmark in the history of this reference was, what happened on 2 July, 1964, which was the last date of hearing concerning the reference. It was on that date that the management and existing union produced before the tribunal a memorandum of settlement reached between them. It is true that, by then, the new union had addressed a letter on 3 June, 1964, complaining against the settlement which it was said the management had arrived at with the existing union, and stated that that settlement was not binding on the members of the new union. But after the transmission of that communication to the tribunal there were two hearings, one on 12 June, 1964, and the other on 2 July, 1964. It is not asserted before us that the new union entered appearance before the tribunal on any one of those two dates, or that the petitioner, who professes to be a member of the union, did so. We must take it and that that is so is not contradicted that on those two dates of hearing, the union did not appear before the tribunal, and that none of its members did so either. So, what was done by the new union was to state on 3 June, 1964, through its communication addressed to the tribunal that the settlement would not bind the workers of the new union, and to desist from making any further endeavour to arrest the transmutation of the settlement into an award. What one should have expected the union should have done, if it was really serious about its protest, was to appear before the tribunal on 12 June, 1964, and then again, on 2 July, 1964, when the existing union and the management produced the settlement and pressed for the settlement being adopted as the basis of the award.

17. It was only on 13 July, 1964 that another letter was addressed to the tribunal - and we are told by Sri Shetti that it was despatched by post - just a day before the tribunal rendered its award.

18. The complaint made in this writ petition would be open to the criticism that the challenge to the award must fail on the ground of clear inaction by the new

union, in the proceedings before the tribunal at very material stages of the proceedings. If the new union stayed away from the tribunal on 12 June, 1964 and 2 July, 1964, and if it did not enter appearance on 2 July, 1964, which was one of the days of hearing, and if it did not, on that day, oppose the adoption of the settlement as the foundation for the award, it is now too late for the petitioner, as one of its members, to call in question the award which came into being in that way. The proper thing to do for the new union was to appear before the tribunal and to urge before it, whatever objection it intended to urge, to the settlement, when it was actually produced on 2 July, 1964. Indeed, it transpires that on 3 June, 1964, when the new union addressed its first communication to the tribunal, a settlement had not yet been reached, since it was reached only on 30 June, 1964. Although the new union stated that the settlement had been arrived at, it is very probable that it was merely in the offing. The new union must have known that the settlement was reached on 30 June, 1964, and it was its duty to inform itself of all the dates of hearing before the tribunal, one of which was 2 July, 1964. It is probable that the new union knew - and we have no doubt about it that it did - that that settlement would be produced before the tribunal on that date of hearing; nevertheless it did not choose to enter appearance on that day and allowed the award to be made on the basis of that settlement. It would be a plain case of acquiescence on its part, such as would preclude it from impeaching the award made on 14 July, 1964.

19. Sri Shetti very frankly admitted that we should exclude from consideration the second letter posted on 13 July, 1964. That letter, he had to admit, was posted too late, even if it otherwise could have any effect, and we doubt whether it had any. The award was made on the very next day, and it is somewhat improbable that that letter would have reached the tribunal before it made its award.

20. It is admitted that the demands, to which the reference related, emanated from a claim made by the existing union on 18 June, 1963, on behalf of the workmen of the industry. It is on the basis of this demand that a reference was made by Government on 21 February, 1964. In the affidavit produced on behalf of the management, of which the deponent is the General Manager of the Commonwealth Trust Ltd., which is in charge of the management of the industry with which we are concerned, it is asserted that there are 115 workmen in the industry, and that all those workmen were, at all times, represented by the existing union. In the petitioner's affidavit, however, the claim made is that there are 120 workmen and that about 60 amongst them are members of the new union. But no material has been placed before us on behalf of the petitioner which she should have been able to do, in support of the truth of this assertion about the numerical strength of the membership roll of the new union. We are inclined to believe the statement in the affidavit produced on behalf of the management, and think that the majority of the workmen of the industry were members of the existing union when the settlement was reached. It is not surprising that, in those circumstances, and especially, in consequence of

complete abstinence on the parts of the new union from active participation in the proceedings before the tribunal, the tribunal felt persuaded to think that the settlement was fair and reasonable.

21. There were two matters before the tribunal, one relating to payment of additional dearness allowance, and the other, concerning a gratuity scheme. The amount claimed by the existing union by way of additional dearness allowance was a rupee a day, and the settlement reached was that the workmen should be paid 19 paise a day. The gratuity scheme was made applicable in manner set out in the memorandum of settlement. It is obvious that the tribunal felt persuaded to think that the existing union had more than adequately safeguarded the interests of all workmen of the industry, and that the settlement which the existing union was able to procure was, in the circumstances, equitable and just. These are the features of the case which dissuade us from the view that the award made by the tribunal stands vitiated for any reason.

22. In the view that we take, it is not necessary for us to discuss the sustainability of the argument advanced by Sri Ramachandran on behalf of the management that it was necessary or permissible for the new union to get itself impleaded as a party to the proceedings before the tribunal in order to clothe itself with right to object to the settlement. On that question, we abstain from expressing any opinion.

23. We, therefore, dismiss this writ petition.

24. But we make no order as to costs.