

(2010) 06 BOM CK 0066

In the Bombay High Court

Case No : Appeal No. 868 of 2006 in Writ Petition No. 2553 of 2006

Mehta Gem Tools Private Limited

APPELLANT

Vs

Mrs. Aruna Arvind Parkar and Others

RESPONDENT

Date of Decision : 15-06-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 18
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2011) 128 FLR 223 : (2011) 2 LLJ 280

Hon'ble Judges : R.P. Sondurbaldota, J;D.K. Deshmukh, J

Bench : Division Bench

Advocate : J.P. Cama and Mahesh Londha, instructed by Sanjay Udeshi and Co, for the Appellant; P.M. Patel, for the Respondent

Judgement

D.K. Deshmukh, J.—By this appeal, the appellant challenges the order dated 5th October, 2006 passed by the learned Single Judge of this Court in Writ Petition No. 2553 of 2006, filed by the present appellant, challenging the order dated 5th January 2006 passed by the Industrial Court in Complaint (ULP) No. 271 of 1999. That complaint was filed by the respondent u/s 28 read with Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention Unfair Practices, Act 1971 (hereinafter referred to as "the Act").

2. The case of the complainants who were seven in number i.e. respondent Nos. 1 to 7, was that - they are entitled to salary for the period from April 1999 to March 2000. According to the complainants, they were workers, employed by the present appellant. According to the complainants, they were working with employer from 1966 and onwards. It was claimed that though they have worked during the period from April 1999 to March 2000, they have not been paid wages for the said period. The defense of the employer was that there was settlement reached between the Union of the employees and the employer, dated 17th April, 2000. As a result of the said settlement, the establishment was deemed to have been closed with effect from 1st April 1999. It was declared that employees are

not entitled to wages from April 1999 as the the workmen were on strike during that period. The terms of the settlement provided for payment of benefits to 19 workers. According to the employer, the seven workers who were complainants, were not entitled to receive anything, in view of the settlement. The Complaint was decided by the Industrial Court by an order dated 5th January, 2006. The Industrial Court held that the settlement was binding on the employer and only 19 workers whose names were contained in the Annexure to the settlement, and that it was not binding on the complainants and therefore, they were entitled to wages for the period from 1-4-1999 to 31-3-2000 i.e. the date of actual closure. Accordingly, the Industrial Court directed payment of wages to the complainants from 1-4-1999 to 31-3-2000. That order was challenged by the employer before this Court in the Writ Petition, referred to above. That writ petition was dismissed by the learned Single Judge by an order dated 5th October 2006. The learned Single Judge dismissed the petition and confirmed the order passed by the Industrial Court.

3. This appeal has been filed, challenging both the orders. It is submitted on behalf of the appellant that it is an admitted position that seven complainants were members of the Union, which had signed the settlement and there was a clear recital in it that no employee is entitled for the wages from 1-4-1999 to 31-3-2000, and this settlement was binding on the Union of which the complainants were members, and therefore, the Industrial Court could not have passed the order for payment of wages to the seven complainants for the aforesaid period. The learned Counsel further submitted that as the settlement declares that the date of closure is 1-4-1999, the seven complainants could not have been held entitled to payment of wages after the said date of closure. The learned Counsel submitted that the learned Single Judge after having accepted that there cannot be two dates of closure in relation to one establishment, could not have sustained the order of the Industrial Court, which results in brining about two different dates of closure of the same establishment because as per the settlement, the establishment is deemed to have been closed on 1-4-1999 and therefore, there cannot be any liability on employer for payment of wages after the closure.

4. On behalf of the seven complainants, on the other hand, it is submitted that the settlement was reached only between the employer and 19 workmen to whom the benefits were to be paid under the settlement and therefore, so far as seven complainants are concerned, there was no closure till March 2000, and therefore, as they continued to be in the employment, they were entitled to for the wages till March 2000. It was initially even submitted that the document of settlement has not been proved and therefore, it could not have been relied upon, and the recital therein that "no wages are to be paid to the employees/workers for the period from April 1999" is only a recital, and is not a term of the settlement. It is contended that the settlement was therefore, not binding on the seven complainants.

5. Now, in the light of these rival submissions, if the record is perused, it becomes clear that the settlement dated 17th April, 2000 which is the relevant settlement, is a settlement reached by Sramjivi Kamgar Union with the appellant/ employer and the said settlement was signed by 19 workmen, as confirming parties. The settlement is basically between the workers' Union and the employer. Perusal of the order of the Industrial Court shows that there is a clear finding recorded by the Industrial Court that seven complainants before it were members of the Union which signed the settlement. Section 18 of the Industrial Disputes Act makes it clear that the settlement arrived at by agreement between employer and the Trade Union, otherwise than in conciliation proceedings, shall be binding on the parties to the agreement. Thus, the settlement dated 17th April, 2000 would be binding on the employer and the Union which has signed it. Admittedly, as per the finding of the Industrial Court, seven complainants were members of the Union which signed the settlement. Therefore, that settlement will bind the seven complainants also. It appears that the complainants, the Industrial Court and also the learned Single Judge were under the impression that the settlement was between the employer and the 19 workmen who signed the settlement as confirming parties. But perusal of the document of settlement shows that 19 workmen were merely confirming parties and the settlement was in between the Union and the employer. The settlement was between the employer and the Union, therefore, on the basis of the material that is placed on record, we have no doubt in our mind that the settlement dated 17th April, 2000 was between the Union of which the complainants were members and the employer, and therefore, obviously, the settlement was binding on the seven complainants. In the settlement it is clearly recited that-

All the workmen refused to carry out any work in the factory which action amounted to strike on the part of the workmen i.e. the workmen are on the strike from the 1st April 1999, and the company has not paid the wages to the workmen from the month of March 1999, out of which the wages upto month of March 1999 are paid, no wages are payable for the subsequent period from April 1999 onwards.

6. Thus, Union agreed that no wages are to be paid for the period subsequent to March 1999 and therefore, the date of closure was decided to be 1-4-1999 by the parties. The date of closure was fixed 1-4-1999 so the liability of the employer to pay wages after that date comes to an end. The first sentence in the first term of the settlement reads as under-

It is agreed between the parties that the Company shall be regarded as closed effective from 1-4-1999.

The two recitals in the settlement which we have quoted above go hand in hand, there is no liability to make payment for the period subsequent to 1-4-1999 because it is the date of closure. As the settlement was binding on the complainants being members of the Union, which incorporates the date of closure as 1-4-1999, they will not be entitled to receive any wages for the period

subsequent to 1-4-1999. As per the settlement the parties have agreed that the closure is to be applied from 1-4-1999. The settlement contemplates benefits flowing from the settlement would be paid to 19 workmen only. However, it is a common ground before us that payments which were to be made to the 19 workmen under the settlement, have been made to the seven complainants also. Therefore, so far as payment of closure compensation and other benefits under the settlement are concerned, the complainants and 19 workmen who have confirmed the settlement, are on par. If the order passed by the Industrial Court is allowed to operate, it will result in an anomalous situation because out of 26 workmen, who were members of the Union which signed the settlement, two sets of workmen would be entitled to different sets of benefits. 19 workmen would be entitled to benefits under the settlement and seven workmen who have already received benefits under the said settlement, would get additional benefit of wages for the period from April 1999 to March 2000. We do not see any justification in extending the additional benefits to the seven complainants, merely because they had not confirmed the settlement. It is clear from the order of the Industrial Court that though the workmen were claiming that they were not parties to the settlement, they have accepted that the establishment has been closed since March 2000. The closure of establishment has been brought about only by settlement dated 17th April, 2000. In our opinion, therefore, as the settlement dated 17th April, 2000 was binding on the seven complainants, a direction for payment of wages for the period from April 1999 to them could not have been given. Consequently, the appeal is allowed.

7. The orders passed by the Industrial Court in Complaint (ULP) No. 271 of 1991, and by the learned Single Judge in Writ Petition No. 2553 of 2006, are set aside. Complaint (ULP) No. 271 of 1991 before the Industrial Court stands dismissed. It is however, made clear that the benefits which have been paid to the seven complainants to bring them on par with the 19 workmen, shall not be withdrawn. If any amounts have been deposited, pursuant to interim order dated 5th December 2006, of this Court, the same shall be refunded to the appellant, together with accruals, if any. Appeal is accordingly disposed of.