

(1990) 12 BOM CK 0035

In the Bombay High Court

Case No : Writ Petition No. 2993 of 1988

Mohan Madhukar Ghate and Others

APPELLANT

Vs

N.D. Rathod and Others

RESPONDENT

Date of Decision : 19-12-1990

Acts Referred:

Industrial Disputes (Bombay) Rules, 1957 — Rule 62
Industrial Disputes Act, 1947 — Section 12, 18(3), 2

Citation : (1991) 2 BomCR 376 : (1993) 3 LLJ 384

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : Radha D'Souza, for the Appellant; L.C. Chogle, for R-1 to 6, J.C. Gadkari, for R-2, 3 and 4 and P.K. Rele and A.M. Vernekar for R-5, for the Respondent

Final Decision : Dismissed

Judgement

D.R. Dhanuka. J.

1. The petitioners are employees of M/s. Glindia Ltd., Respondent No. 5 in this petition. The petitioners are members of Glaxo Laboratories Employees' Union, a Union duly recognised u/s 12 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, hereinafter referred to as "the 1971 Act". On 16th September 1988, a settlement was arrived at between the Union and Respondent No. 5 in the course of conciliation and was duly signed and endorsed by the Conciliation Officer, Respondent No. 1. The said settlement covered several demands which were made by the Union on the management earlier. By the said settlement the management conceded part of the demands of the union.

2. The petitioners, in this petition, have impugned the validity of the said settlement dated 16th September 1988 on various grounds. If the petitioners would have merely challenged the validity of the said settlement without anything more and without contending that the Conciliation Officer had failed to

perform his statutory duty, this petition would not have been entertained. The petitioners, however, made detailed averments in the petition alleging that Mr. N.D. Rathod, the Respondent No. 1, had failed to perform his statutory obligations as a Conciliation Officer and the said settlement could not therefore be considered as a settlement arrived at "in the course of conciliation". The petitioners have assailed the said settlement, inter alia, on the ground that the office-bearers of the Union, Mr. D.N. Mayekar, Mr. S.K. Padlia and Mr. M.M. Manjrekar, Respondent's No. 2, 3 and 4, respectively, in this petition, arrived at the said settlement contrary to mandate of general body of members and without requisite authority and the said settlement could not therefore be considered as a settlement arrived at with the union. The petitioners have also contended that the said settlement was not arrived at bona fide but was arrived at as a result of collusion and it was unfair and contrary to the interest of the workmen.

3. Before the facts and circumstances leading to the filing of this petition are set out at some length, it is necessary to state at the threshold that the President and other office-bearers of the union were authorised to sign the said settlement by the managing committee of the union by its resolution passed on 14th September 1988. A copy of the minutes of the meeting of the managing committee of the union held on 14th September 1988, is made available to this court. It appears from the said minutes that 32 members of the managing committee were present at the said meeting. It is common ground that three of the petitioners were also present at the said meeting in their capacity as members of the managing committee. It is also common ground that 27 members of the managing committee voted in favour of the settlement which was ultimately signed on 16th September 1988. It is also obvious from the minutes of the said meeting dated 14th September 1988 and also from other records that a secret ballot had been held by the union so as to ascertain the wishes of the members of the union as to whether the proposed settlement should be accepted by and on behalf of the union or not. It is stated in the said minutes, which are authenticated minutes, that Mr. D.N. Mayekar, President of the Union, had informed the managing committee members that secret ballot had been conducted at Thane on 2nd September 1988 and at Worli on 5th September 1988 in terms of the decision taken in the general body meeting held on 26th August 1988 and 29th August 1988 at Thane and Worli. It is stated in the said minutes that the result of the secret ballot was as follows:-

"Total number voted from Worli and Thane Units: 1324

(a) Members voted in favour of should be settled in the Company: 962

(b) Members voted in favour of should be referred to the Court: 322

Invalid votes: 40

It is therefore obvious that a very large number of members were in favour of The said proposed settlement. Thus the President and other office-bearers of the

managing committee had acted in accordance with the wishes of the majority of the members and in accordance with the authorisation of the managing committee at the said meeting held on 14th September 1988. The President and other office-bearers were entitled to act under Rule 62 of the Industrial Disputes, (Bombay) Rules and bind the union with the settlement. Ordinarily no individual member has any locus standi to challenge the settlement between the recognised union and the management.

4. Having referred to the authorisation of the office-bearers of the union to enter into the said settlement, I shall now proceed to sum up the other facts and circumstances of the case leading to the filing of this petition.

5. (a) Prior to arriving at the said settlement dated 16th September 1988, an earlier settlement dated 10th September 1984 was in force. The said settlement expired sometime in the year 1987 and was thereafter terminated by the union by letter dated 22nd April 1987. By its letter dated 1st July 1987, the union submitted its Charter of Demands to the management. It appears that thereafter certain proposals were discussed between the office-bearers of the union and the representatives of the management. The proposals made by the management were rejected by the managing committee of the union in its meeting held on 4th April 1988. Thereafter a general body meeting was called. The general body meeting of the members of the union was held on 18th April 1988. At this meeting, the consensus of the members was that conciliation proceedings, should be adopted under Industrial Disputes Act, 1947, so that a fair settlement could be arrived at with the assistance of the conciliation officer. In other words, at that stage the general body of the members was not in favour of the settlement as it was then proposed. In accordance with the decision of the general body taken at its meeting held on 18th April 1988, the managing committee formed a committee of certain members to conduct conciliation proceedings on behalf of the union and this decision was taken by the managing committee on 22nd April 1988.

(b) On 2nd May 1988, a letter was addressed on behalf of the union to the Deputy Commissioner of Labour seeking conciliation in respect of demands set out in the Charter of Demands dated 1st July 1987. The said demands were admitted in conciliation.

(c) It appears that the members of the union had a second thought about the proposed settlement, perhaps in view of law's delays and concrete benefits which would be available to them with immediate effect if the dispute was settled and for the sake of industrial peace. Accordingly, sometime in the month of August 1988, a requisition signed by about 1200 members of the union employed at Worli and Thane establishments appears to have been received by the union to consider the question of settlement once again and review the decision which was taken by the union at the earlier general body meeting held on 18th April 1988. At these meetings, which were held at Thane and Worli on 26th and 29th August 1988, members were divided in their views and

accordingly a decision was taken that the opinion of the members be ascertained by holding secret ballot. On 30th August 1988, a notice was issued by the union in that behalf. There is a controversy in respect of interpretation and effect of order of injunction passed by the Bombay City Civil Court at Bombay on 4th September 1988 in Bombay City Civil Court Suit No. 6951 of 1988. It is not necessary for me to finally decide that controversy in these proceedings. Prayer (a) of the notice of motion dated 4th September 1988, in terms whereof the order of injunction was sought, reads as under:-

"(a) that pending the hearing and final disposal of the suit, the defendants be restrained by an order and injunction of this Hon"ble Court from giving effect to the notice dated 30.8.88 at Exhibit "H" to the plaint (and holding any further General Body Meeting or secret ballot or conduct signature campaigns) or seek reference in the matter of approval of the recommendations of the Negotiating Committee which were rejected at the General Body Meeting on 18th April 1988 and 29th August 1988;"

The learned Judge of the Bombay City Civil Court granted ad-interim relief in terms of prayer (a) of the notice of motion after excluding therefrom the portion, inter alia, dealing with the subject of "secret ballot". It is the contention of the learned counsel for the petitioners that the secret ballot held at Thane and Worli could not have been so held in view of the said order of injunction whereas it is the contention of Mr. Gadkari, the learned counsel appearing for Respondent No. 3, that there was no order of injunction restraining the defendants in that suit from holding the said secret ballot. prima facie, I am not impressed by interpretation of the said order of injunction by the learned counsel for the petitioners. In my opinion, secret ballot was properly held. There is no infirmity in the holding of said secret ballot merely because it was held at Thane and Worli both.

(d) Ordinarily, the authority of the managing committee would be sufficient to entitle the office-bearers to sign a settlement under Clause 11 of the Constitution of the union. The same is the effect of operation of Rule 62 of the Industrial Disputes (Bombay) Rules, 1957. In view of the divided opinion of the members in this case, the office-bearers took extra precaution of ascertaining the views of the members by holding secret ballot and it is not bona fide disputable that the majority of the members of the union decided to go ahead with the proposed settlement. The office-bearers of the union acted in good faith. It might be that the petitioners, who appear to be in a minority group at that time, were fighting to get better package of benefits to the workmen. In this sense, the petitioners must have also acted in good faith. But it was for the majority to decide whether to accept some benefits under a settlement rather than to go ahead with a prolonged litigation. If the office-bearers would have signed the settlement without a resolution of the managing committee, the said settlement could not have been considered as a settlement between the management and the union. Since the office-bearers had authorisation of the managing committee resolution

approved by 27 out of 32 members, no fault can be found with the office-bearers in signing and accepting the said settlement.

6. Mrs. D'Souza, the learned counsel for the petitioners, has invited my attention to several facts and has argued this matter in detail. My attention has been invited, in particular, to the correspondence annexed to the petition. By a letter dated 7th September 1988, the petitioners had informed the Respondent No. 5 that secret ballot was conducted in disobedience of the order of injunction granted by the Bombay City Civil Court. I do not accept this interpretation placed on the order dated 4th September 1988 passed by the Bombay City Civil Court. Secret ballot at Thane had already been held on 2nd September 1988 when no order of injunction was issued. The secret ballot at Worli was held on 5th September 1988 and it was a reasonably possible interpretation on the part of the office-bearer of the union that they could hold the said secret ballot as the provisions relating to holding of secret ballot were excluded from the operation of the order of injunction passed by the learned Judge of the Bombay City Civil Court. By a letter dated 14th September 1988 addressed to the conciliation officer, the petitioners informed the conciliation officer that 788 members of the union had expressed no-confidence in the office-bearers of the union. The conciliation officer contends that no such letter was received by him. The conciliation officer was not in any event concerned with the said letter in view of Section 20(2) of the 1971 Act. As a matter of fact, it has been pointed out in the affidavit of Mr. Mayekar that a vote of confidence was passed by the managing committee in favour of the office-bearers in the meeting held on 18th April 1988. At any rate if 962 members of the union and 27 members of the managing committee had backed the settlement, I can attach no importance to this letter dated 14th September 1988. As against that, on 14th September 1988, the office-bearers of the union had addressed another letter to the conciliation officer asking him to speed up the process of conciliation and majority of the workmen were clammering for settlement. It is contended by the learned counsel for the petitioner that the conciliation officer ought to have replied to these letters. It is also contended by the learned counsel for the petitioners that all the members of the conciliation team which was authorised by the managing committee in its earlier resolution dated 22nd April 1988 did not participate in the proceedings for conciliation. It is impossible to arrive at any settlement if individual members were to be heard by the conciliation officer. In this context and at this stage it is absolutely necessary to refer to the provisions of the 1971 Act.

7. Chapter III of the said Act makes elaborate provisions for recognition of a union by the Industrial Court. In this case the union was recognised by the Industrial Court in the year 1985. Section 20(2)(b) of the 1971 Act reads as under:

"20(2) Where there is a recognised union for any undertaking,-

(a).....

(b) no employee shall be allowed to be represented in any proceedings under the Central Act (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration), except through the recognised union; and the decision arrived at, or order made, in such proceeding shall be binding on all the employees in such undertaking;"

By the said State legislation, certain provisions of the Industrial Disputes Act, 1947 are also amended and a proviso is inserted in Section 18(1) of the Industrial Disputes Act, 1947. It is clear from the above referred provisions that no employee is allowed to appear or act or allowed to be represented in any proceeding under the Central Act, save and except the proceeding relating to the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service or suspension, etc., except through the recognised union. Thus the petitioners had no locus standi to appear in the conciliation proceedings.

8. Notwithstanding the above absolute bar, this Court, as a writ Court, would have examined the grievance of the petitioners if it was obvious to this court that the said settlement was tainted with collusion, corruption, nepotism or favouritism or was ex facie detrimental to the interests of the workmen. Such a case is non-existent here. It has been pointed out, in Paragraphs 25 and 27 of the affidavit filed by the second respondent, that the workers have derived several benefits under the said settlement in terms of increase in their wages as well as in respect of dearness allowance. It may be that the petitioners bona fide felt that this much increase was inadequate and the workers ought to have continued the struggle for larger benefits. But if the majority of the workmen represented by the union and the managing committee thought that arriving at of the settlement was better in the interest of industrial peace and in terms of immediate gain to them, they were entitled to do so. Accordingly, I cannot accept any suggestion, direct or indirect, against the office-bearers of the union or against the conciliation officer that the said settlement was unfair. I have gone through all the relevant material on record. In my judgment, the said settlement cannot be described as unfair and therefore it will have to be presumed to be just, fair and reasonable, as it was so thought to be by the union, by the majority of the workmen and also by the conciliation officer. Mr. Chogle, the learned counsel for the conciliation officer, has told me that there is material on record in the form of making of figures in the hands of the conciliation officer, which would show that the conciliation officer has applied his mind. The conciliation officer has also filed his affidavit in which he has stated that he had called several meetings in the course of the conciliation i.e. on 15th June, 1988, 20th June, 1988, 27th June, 1988, 15th July 1988, 20th July 1988, 27th July 1988, 9th August, 1988, 9th September, 1988, 13th September, 1988 and 16th September, 1988. It is therefore not possible for me to accept the submission of the learned counsel for the petitioners that the conciliation officer acted in undue haste.

9. It was argued by Mrs. D'Souza, the learned counsel for the petitioners, that the employer had forwarded its justification statement in support of its demands by a letter dated 14th September 1988 and the subject-matter of the settlement included not merely the Charter of Demands which was submitted by the union in July 1987, but also comprised the Charter of Demands submitted by the management in respect of change of conditions of service. It has been clarified by all the learned counsel that in respect of demands submitted by the management to the conciliation officer, a reference has been made u/s 10 read with Section 12(5) of the Industrial Disputes Act, 1947 and the said reference is pending. Accordingly, it is not necessary to discuss this aspect of the matter any further. I accept the affidavit filed by the conciliation officer and it is not possible for me to hold that he has abdicated or failed in his duty. It is true that notes of meetings held by the conciliation officer are not detailed. He is however not required to maintain detailed notes. If he would have maintained detailed notes, in view of the friction amongst the members of the union, perhaps it would have been better, but I must apply the presumption u/s 114 of Evidence Act, 1872 and presume that all official acts are presumed to have been done in ordinary course of duty by a public servant. The petitioners have not discharged the onus which lies on them to point out the circumstances or material from which I can infer any dereliction of duty on the part of the conciliation officer. There was no malice in fact or in law either on the part of the conciliation officer or on the part of the office-bearers of the union.

10. Having dealt with the factual aspects, I shall now deal with some of the authorities cited at the bar. The learned counsel for the petitioners relied upon the judgment of the Supreme Court in the case of Bata Shoe Co. (P) Ltd. v. D.N. Ganguly, reported in 20 FJR 91. It was held in this case that a settlement can be said to have been arrived at "in the course of conciliation proceedings" u/s 18 of the Industrial Disputes Act, 1947 only if the conciliation officer has promoted the settlement and has applied his mind to the settlement. The expression "in the course of conciliation proceedings" was interpreted to mean only such settlements which were arrived at with the active assistance of the conciliation officer. In my judgment, in the present case, the conciliation officer applied his mind to all relevant aspects fully and assisted the parties to arrive at the settlement. Certain aspects of the settlement may have been finalised between the office-bearers of the union and the management at the last minute and the conciliation officer may have given his approval also at the last minute. From all this it cannot be inferred that the conciliation officer did not apply his mind or acted with undue haste. Sometimes it is better to act with speed and expedition, otherwise the settlement may break and the chances of settlement may also disappear. When allegations of breach of statutory duty and mala fide or collusion are made, the onus to substantiate these allegations is very heavy on the petitioners. I have no hesitation in accepting the affidavit of Respondent No. 1 as true.

11. It is now necessary to refer to another judgment of the Supreme Court in the

case of Balmer Lawrie Workers" Union, Bombay and Another Vs. Balmer Lawrie and Co. Ltd. and Others, . In this case, the validity of Section 20(2) of Maharashtra Act I of 1972 was impugned. It was held by the Supreme Court that the said Section was valid and did not suffer from any infirmity. As a matter of fact, there are similar provisions for functioning of a representative union under the Bombay Industrial Relations Act, 1946. Mr. Chogle, the learned counsel for the conciliation officer, has cited several authorities. It is not necessary to refer to all of them, but reference may usefully be made to one of the judgments of the Supreme Court cited by him i.e. the case of Herberisons Ltd. v. Their Workmen reported in 1976 (33) FLR 398, AIR 1977 SC 322. In this case it was held by the Supreme Court that a settlement arrived at by a recognised union was binding on the members. It was held by Goswami, J. speaking for the Bench of the Supreme Court that normally an individual worker did not come in the picture at all. It was however held that in exceptional cases where there may be allegations of mala fides, fraud, corruption or other inducements, the validity of the settlement could be gone into. No such allegations are proved in the present case.

12. Accordingly, relying upon the aboveresferred three judgments of the Supreme Court and the detailed survey of facts and analysis of affidavits in this case, I have no hesitation in dismissing this petition, howsoever well motivated it may have been when it was filed.

13. I hope that all sections of the union will keep themselves united and forget their differences in mutual interest.

14. Having regard to the facts and circumstances of the case, rule is discharged with no order as to costs.