
(1980) 05 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 274 of 1976 (R)

M/s. J.D. Jones and Co. (Bihar) Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-05-1980

Acts Referred:

Industrial Disputes Act, 1947 — Section 17, 19, 19(6)

Citation : (1981) PLJR 262

Hon'ble Judges : Satyeshwar Roy, J; Hari Lal Agrawal, J

Bench : Division Bench

Advocate : B.C. Ghose, P.K. Sinha and D.K. Sarkar, for the Appellant; S.B. Gadodia and A.B. Kumar, for the Respondent

Final Decision : Allowed

Judgement

Hari Lal Agrawal and Satyeshwar Roy, JJ.—The petitioner, a Small Scale Industry, has come to this Court in its writ jurisdiction against the decision of the Presiding Officer, Industrial Tribunal Ranchi, dated 11-11-1976 in a reference case rejecting the preliminary objection of the petitioner to the maintainability of the reference itself. The reference giving rise to the industrial dispute in question was made on 23/24-6-1975 vide Annexure "2" The three questions referred to the Tribunal for its decision were as follows:--

1. Whether the workmen of M/s. J.D. Jones and Co. (Bihar) Ltd. Adityapur, should get D.A.? If so, at what rate and since when?
2. Whether the suspension of Shri Trilochan Mahto is proper and justified? If not, whether he is entitled to reinstatement and/or any other relief?
3. Whether the dismissal of Sarbashri Mahindra Jha, Sabhapati Choudhury and Arjun Singh is proper and justified? if not, whether he is entitled to reinstatement and/or any other relief?

It may be mentioned that earlier to this reference a dispute had arisen between

the parties in the year 1970 and on that occasion also the disputes were referred to by notification dated 29-5-1970 to the Tribunal for its adjudication. One of the disputes was revision of the wages.

2. During the pendency of the reference which was Reference No. 25 of 1970 a settlement was arrived at between the parties and the parties agreed that the said settlement will remain binding for a period of three years from its date and the Union/Workmen will not raise any dispute in respect of salary/wages during the binding period of settlement. The settlement was arrived at on 21-6-1972 and the period of three years computing from that date would expire on 21-6-1975. A copy of the settlement was filed before the Tribunal in the aforesaid Reference case and the Tribunal on examining the terms of the settlement felt satisfied that the same were established principle that in the interest of lasting industrial peace it was always desirable that the parties should resolve their differences by mutual deliberations and consultations having goodwill for each other, it accepted the settlement and made its Award in terms thereof specifically incorporating the memoranda of settlements dated 12-6-1971 and 21-6-1972 forming part of the Award as Annexures "A" and "B". A copy of the said award has been made Annexure "I" to this application which is dated 18-4-1973. On 1-9-1974 i.e. after the expiry of the period of one year of the award the Secretary of the Union wrote a letter to the petitioner terminating the award giving two months time to the Management after which the award was to stand terminated.

3. When the present reference was made, the petitioner took a preliminary objection on various grounds to the maintainability of the reference and one of the grounds was "Award in Reference No. 25 of 1970 on 15-4-1973 had not been legally terminated which would mean that the same was in force on the date of reference and is, therefore, hit by the provisions of Section 19(6) of the Industrial Disputes Act, 1947". This objection did not find favour by the Tribunal. It took the view that since the statutory period of one year of enforceability of the award had been over, the Union had got the right to terminate it by giving a notice of two months and, therefore, the effect of the award having ceased to remain in force, the reference in question was quite competent. The petitioner has, accordingly come to this Court.

4. Mr. B.C. Ghose, learned counsel appearing in support of this petition, has challenged the correctness of the order of the Tribunal on the ground that the basis of the award was the settlement mentioned above and the award could not, by any imagination, curtail the period of three years for which the parties had agreed under the settlement. The learned counsel argued that notwithstanding the award, the settlement would remain in operative and binding on the parties. In other words the argument is that the settlement is the basis of the award and not that the award is the basis of the settlement.

Section 19 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) prescribes the period of operation of settlements and awards, whereas Sub

section (3) of Section 19 of the Act prescribes that an award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which it becomes enforceable and by virtue of Sub-section (6) it has to continue to be binding on the parties until a period of two months elapses from the date on which notice is given by the parties bound by the award to the other party or parties intimating its intention to terminate the award; under Sub-section (2) a settlement is to remain binding for the period agreed upon by the parties. In the case of settlement also the terms are to continue to be binding on the parties after the expiry of the period aforesaid until the expiry of two months from its date in the case of an award. It is on the basis of this provision that Mr. Ghose has argued before us that inasmuch as the period of settlement was still operative, no reference could be made on 23-6-1975.

5. The learned Standing Counsel, on the other hand, contended that the preliminary objection taken by the petitioner regarding the maintainability of the reference was only based with reference to the award dated 15-4-1973 and not the settlement. The Tribunal has also considered the preliminary objection in the background of the award only and has held that by virtue of the provisions contained in Sub-sections (3) and (6) of Section 19 of the Act the operation of the award stood terminated.

6. The argument by Mr. B.C. Ghose, as already seen earlier, is that the Tribunal has committed an apparent error of law in not taking into consideration the effect of the settlements in question arrived at between the parties which, undisputedly, were operative till the date of the reference.

7. According to Sub-section (2) of Section 19 of the Act the settlement is binding for such period as agreed upon by the parties. It is also clear that an award is normally effective and continuous to be in operation for a period of one year unless its operation is extended by the Government, under the second proviso to Sub-section (3) of Section 19 of the Act. It is not disputed that settlements stand on a different footing and operate for the period agreed upon between the parties. The whole confusion and the dispute that has arisen in this case due to the incorporation of the settlements in the award. The question is as to whether on account of incorporation of the settlements in the award its independent existence will come to an end and the period for which it was agreed upon by the parties to be operative would cease to have effect and thereby the provisions of Sub-section (2) of Section 19 would be rendered ineffective. The argument of Mr. B.C. Ghosh is that, notwithstanding this fact, the award being given by the Labour Court in pursuance of the settlement the settlements themselves would occupy the field and would remain binding by force of the statute. The award itself, as already seen earlier, has taken note of the settlement between the parties and the fact that this was to remain in force for a period of three years. We are of the view that the binding nature of the effect of the settlement would not be rendered ineffective even if there is an award in terms thereof. Reliance on the award on behalf of the petitioner before the Tribunal in the preliminary

objection, therefore, would not disentitle the petitioner to challenge the validity of the reference on the basis of the existence of the settlement particularly when the fact is mentioned and incorporated in the award itself, so much so, that the copy of the settlements had been annexed by the Tribunal as part of the award. Taking any other view, in our opinion, would cause violence in the harmonious construction of Sub-sections (2) and (3) of Section 19 of the Act. The settlement would be deemed to merge in the award as such simply for the fact that they became the award of the Tribunal. It may well be that the award could operate only for a period of one year but on that account the life of the settlement would not be cut down. The scheme of Sub-section (3) of Section 19 of the Act do contemplate for a variation of the period of an award both ways i.e. it could either be reduced or be extended but no such provision is there with respect to the settlement. It is obvious that the period for which the settlements are arrived at between the parties cannot be curtailed. We therefore have no doubt to come to the conclusion that merely because a settlement had been arrived at between the parties after an industrial dispute was referred to the Tribunal it could not be said that it could be a settlement. Even though the dispute is referred to the Tribunal the Tribunal cannot refuse to accept the settlement made by the parties as was done by the Tribunal in this case. We find a direct support for this view from a Bench decision of the Bombay High Court in the case of (1) M/s. Garment Cleaning Works V.D.M. Aney and another, AIR 1979 Bom 209. Reference in this connection may also be made to the case of (2) The Sirsilk Ltd. and Others Vs. Government of Andhra Pradesh and Another, . In that case after the Tribunal had given its Award and the matter had gone to the State Government for its publication, a settlement had been arrived at between the parties. In that view of the matter the parties agreed that the award should not be published, but the State Government, on the matter being agitated before the High Court, took the view that in view of the provisions contained in Section 17 of the Act, publication of the award should not be withheld. When the matter went to the Supreme Court, it was held that where a settlement is arrived at between the parties to a dispute before the Tribunal after the award has been submitted to the Government but before its publication, there is in fact no dispute left to be resolved by the publication of the award. In such a case, the award sent to Government may very well be considered to have become infructuous and so the Government should refrain from publishing such an award. The effect of this decision is also that the award cannot supersede the settlement rather on the other hand a settlement can supersede the award. For the reasons given above this application must succeed and it be held that the reference made by the order contained in Annexure "2" was incompetent. We would, accordingly, allow this application and quash the reference, but in the circumstances of the case will make no order as to costs. It goes without saying that on quashing of the reference, the proceeding before the Tribunal comes to an end.