

(1993) 10 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No. 1780 of 1993

M.S. Patel and Company

APPELLANT

Vs

Workmen and Others

RESPONDENT

Date of Decision : 01-10-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 12, 18(1), 18(3)

Citation : (1994) 68 FLR 413 : (1994) 2 LLJ 1093

Hon'ble Judges : A.V. Savant, J

Bench : Single Bench

Judgement

A.V. Savant, J.—Heard Dr. Chandrachud for petitioner and Shri. Ganguli for respondent no. 1.

2. This is a petition against the interim order dated 12th July 1993 passed in a pending reference no. 168 of 1990 by the industrial Court, Bombay. Under the said interim order the petitioner-company is directed to give the financial benefits to the remaining 34 workmen on their giving the necessary undertaking under protest. It has been further clarified that if such benefit is given to the said workmen as per the said interim order, it will be subject to the final outcome of the matter and any such amount will stand adjusted towards the arrears, if any, found due under the Award.

3. Since the petition is against an interim order as above, I need not go into the facts in great details. While I am inclined to expedite the hearing of the said reference, my reason for refusal to interfere with the said order are as under.

4. It appears that an earlier settlement dated 14th November 1986 came to an end by 30th November 1988. A fresh charter of demands was, therefore, presented on 1st December 1988. On failure report being submitted, a reference was made under Sec. 12 of the industrial Disputes Act on 17th May 1990. Though the opening para of the impugned order says that the payment is to be made to 40 workmen who had not accepted the undertaking both the learned

Counsel stated that the correct number is 34 and 40. This is so because 70 out of 104 workmen have accepted the benefits.

5. The Industrial Tribunal has held that the Union had prima facie proved that it was entitled to interim relief and that balance of convenience was in favour of the Union and not the management. A finding has been recorded that the recognised Union is the sole agent to enter into any settlement or agreement with the company. In my view, this is consistent with the proviso to sub-sec. (1) of sec. 18 of the Industrial Disputes Act. Sub-sec.-(1) says that a settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. However, proviso to sub-sec. (1) of sec. 18 says that where there is a recognised union for any undertaking under any law for the time being in force then such agreement shall be binding on all persons referred to in clause (c) and clause (d) of sub-sec. (3) of sec. 18. At the same time the learned Judge has kept the controversy open for adjudication at the final hearing stage. This has been specifically observed at the end of para 7. Similarly in para 9, it has been observed that an individual settlement would not be permissible if there is a recognised Union functioning in the Industry. Para 10 records a finding that while the financial benefits under notice dated 22nd January, 1990 have been given to a majority of the workmen, the same have been denied to 34 workmen who have decided to challenge the action on the part of the Company. Prima facie this would amount to discouraging the Union activities.

6. Dr. Chandrachud has invited my attention to the fact that in the face of the settlement dated 22nd January 1990 and the later settlement dated 26th August 1992, no such interim order could have been passed. Reliance is sought to be placed on the observations of the Supreme Court in the case of New Standard Engineering Company Ltd. Vs. N.L. Abhyankar and Others, . Having perused the said decision, with respect, I do not think that the ratio of the said decision supports the Counsel's contention.

7. On the other hand Shri. Ganguli has contended that notice Ex. D dated 22nd January, 1990 was a unilateral decision and had clearly the result of favouring one set of the workmen against the other. This would amount to showing favouritism or partiality to one set of workers, regardless of merits which is an unfair labour practice within the meaning of item (5) of Schedule IV of the M. R. T. U. & P. U. L. P. Act, 1971. He has also invited the attention to the Division Bench decision (of Kurdukar and Jamdar JJ.) in the case of Grind well Norton Limited v. Grind well Norton Workers Union and others reported in 1987 (54) Indian Factories and Labour Reports page 727. Counsel placed reliance on the observations of para 4 of the said decision at page 728 dealing with the settlement arrived at between the company and Union during the pendency of the reconciliation proceedings. He has also invited my attention to my decision in the case of C. T. R. Trade Union and others v. C. T. R. Manufacturing Industries Ltd. & Others reported in 1992 C. L. R. 632. Counsel invited my attention to the

observations in paras 5 and 8 of the judgment where I have referred to the Supreme Court decision and another order passed by Shrikrishna J. It is not necessary to reproduce the said portion and it may be sufficient to refer to the head note which reads as under :

"Industrial Disputes Act, 1947 - Reference of Industrial Dispute - Claim for interim pending reference - Held following the decision in the case of Hotel Imperial 1960 SCR 476 that the application for interim relief was maintainable. II. Interim relief : Settlement between Respondent No. 1 Company and Respondent No. 2 Union -Petitioner another union claim by way of interim relief in pending reference the benefit flowing from settlement - Company claim declaration/undertaking from Workmen to accept obligations arising under the Settlement held that the company shall extend benefits under settlement by way of Interim relief and the question whether the workmen be subjected to obligation arising under the settlement shall be expressly decided while finally deciding the reference".

8. Finally Shri. Ganguli sought to place reliance on the decision of this Court in the case of I. C. I. Ltd., v. N. A. Kadam and others reported in 1993 (1) Current Labour Reports 378. He referred to the observations in paras 21 to 25 at pages 383 to 385. It is not necessary for me to pronounce a judgment on all these aspects at this stage. I am hearing a petition against an interim order. The mere fact that a settlement has been arrived at during the pendency of proceedings is no bar in passing the interim order if the facts and circumstances so justify. The unilateral notice Ex. D dated 22nd January 1990 cannot have the effect of penalising such of the workmen who were agitating for their rights. The balance of convenience is clearly in favour of the workmen. Under the circumstances, I find no reason to disturb the interim arrangement which sufficiently protects the interests of the petitioner also.

9. However, the Industrial Court is directed to hear and dispose of the reference as expeditiously as possible and preferably by 31st March 1994. Subject to his direction the writ petition is rejected.