
(1967) 09 KL CK 0002
In the High Court Of Kerala

Padmanabhan Menon (T.K.) and Others	APPELLANT
Vs	
Indian Aluminium Company Ltd. and Others	RESPONDENT

Date of Decision : 05-09-1967

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12, 13, 17, 18

Citation : (1968) 2 LLJ 225

Hon'ble Judges : M.U. Isaac, J

Bench : Single Bench

Judgement

M.U. Isaac, J.—These two writ petitions also out of an unfortunate rivalry between three registered trade unions representing the workers in the Indian Aluminium Company, Ltd. (hereinafter referred to as the company). The company has about 750 workers, including the office staff which consists of clerical and non-clerical sections. The office staff has got a strength of 113, of which 53 belong to the clerical section. There is some dispute regarding their exact number. The Aluminium Factory Workers' Union (hereinafter referred to as the first union) has been in existence for a very long number of years; and it was the only trade union which represented the workers in the company till very recently. The Indian Aluminium Company Employees' Union (hereinafter referred to as the second union) was formed in 1965: and it claims a membership of 134, including a few workers in the non-clerical section of the office staff. According to the first union, the strength of the second union is much less. The Indian Aluminium Company Staff Association (hereinafter referred to as the third union) was also formed in 1965: and it claims to represent 39 out of the 53 members of the clerical staff, according to the statement appended to the additional counter-affidavit dated 25 March 1967 filed on its behalf in Original Petition No. 4877 of 1956. This claim is not disputed. The first union claims a membership of 680; but according to the second and the third unions, the first union has now only a membership of 350.

2. According to the first union, it has been the sole collective bargaining agency

of the workmen in the company ever since 1951, and all Industrial disputes or grievances and claims of the workers were duly raised, transacted and settled by it. The practice was to consult the members of the union through the general body meetings at every stage, and settle matters after the concurrence of the general body, and arrive at long-term settlements in respect of general questions. On 12 June 1963, a long-term settlement was arrived at between the company and the first union and it was to be in force till 31 December 1965. On 29 May 1965, the Payment of Bonus Ordinance, 1965, was promulgated, which substantially altered the law relating to payment of bonus, and therefore, a revision of the bonus scheme contained in the settlement of 12 June 1963 became necessary. Accordingly, another settlement was arrived at between the company and the first union in respect of bonus on 20 August 1965. I am referring in this judgment to the exhibits in Original Petition No. 4377 of 1968, as most of the documents relevant to the controversy between the parties have been produced in this case, Exhibit P. 1 is a copy of the memorandum of the above settlement and it provides that this settlement would remain in force till 31 December 1968. It also contains a clause, which the first union describes as "the usual provision," to the effect that the first union has been recognized

as the sole collective bargaining agent for the workmen as defined in Section 2(s) of the Industrial Disputes Act, 1947, an amended from time to time now employed and hereafter employed by the company during the life of this agreement).

During the pendency of the negotiations, which led to the settlement, Ex. P. 1, some of the workers including a few workers in the non-clerical section of the office staff fell out from the first union, and they formed and registered the second union. The large majority of the clerical staff thought that they formed a class by themselves, having special interests of their own, which differed from the interests of the general workers as a whole, and that they should have their own trade union. Accordingly, they resigned from the first union, and formed the third union, which was also duly registered. The resignation took place on 27 August 1965, which was two days prior to Ex. P. 11 and the immediate reason for this development was that the clerical staff felt that their interests were not properly cared for or safe-guarded in, the negotiations which led to the settlement, Ex. P.1.

3. On 31 December 1965, the long-term settlement of 1963 expired. The first union, claiming to represent the totality of the workers, placed a charter of fresh demands, Ex. P. 2, dated 21 January 1966, before the company demanding better service conditions in respect of wages, leave, salaries, provident fund, gratuity, etc. The second union also submitted two memorandums of demands to the company. These memorandums or their copies have not been produced in this case. But Ex. P. 5. a letter, dated 28 October 1966, of the District Labour Officer, Always, refers to them, and they were dated 10 February and 20 October 1966, The third union submitted a memorandum of demands to the company

regarding the office staff on 7 March 1966 Exhibit P. 3 is a copy of this memorandum. The third union claimed that is alone was competent to represent the clerical staff, and that any settlement arrived at between the company and the first union would not be binding or acceptable to the clerical staff This is obvious from the letters (copies of which have been produced in Original Petition No. 3544 of 1966), which the third union had written from time to time to the first union, to the company and to the officers of the Labour Department. On 20 July 1966, the District Labour Officer. Always, issued a notion to the company and the third union to held a joint conference of the parties in respect of the demands, which the third union had made on 7 March 1969. But the company declined to attend the conference, and it was adjourned. In the meanwhile, the first union and the company were negotiation for the settlement of the charter of demands placed by the first union as per Ex. P. 2. The third union, therefore, filed a suit in the Parur Munsif's Court as Original Suit No. 412 of 1966 for an injunction retraining the first union and the company from entering into any settlement concerning the clerical staff, and obtained an order of interim injunction. This was vacated on 25 August 1966. The third union then filed Original Petition No. 3544 of 1966 on 3 October 1966, praying for a writ of mandamus or other appropriate writ or order directing the District Labour Officer, Always, the Labour Commissioner, Trivandrum, and the Deputy Labour Commissioner, South Zone, Trivandrum, who are respondents Section 4 and 5, respectively, in this original petition, not to give their concurrence to any settlement of the demands relating to the clerical staff of the company without giving an opportunity to the third union to participate in the conciliation proceedings. The works manager of the company and the general secretary of the first union are respondents 1 and 2 in this original petition. On 7 October 1966, the third union got an order of interim injunction from this Court to the above effect. On 17 October 1966 the company and the first union executed a memorandum of settlement, Ex. P. 4, by which they settled the demands made by the first union as per Ex. P. 2. This was done without reference to the second and third unfone, and ignoring their claims to represent two sections of the workers of the company. However, respondent 3, the District Labour Office, Always, issued a notice, Ex. P 5, dated 28 October 1966, to the company and the second union, and another notice, Ex. P. 6, dated 4 November 1966, to the company and the third union; proposing to hold a Joint conference of the parties for settlement of the demands raised by these respondents unions. Original Petition No. 4377 of 1966 was these, filed by the first union on 6 December 1966, praying for a writ in the nature of a prohibition or other appropriate direction restraining respondents 1 to 3 (who are the State of Kerala, the Labour Commissioner, Trivandrum, and the District Labour Officer, Always, respectively from exercising their powers under Sections 10 and 12 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), in in(sic) of Exs. P. 5 and P. 6, and in the alternative for a direction to the said respondents not to proceed for her under Exs. P. 5 and P 8 without notice to the first union and without reference to the settlements as per Exs. P. 1 and P. 4. The company is respondent 4, and the

third and the second unions are respondents 5 and 6, respectively, in this original petition.

4. The first union in the counter-affidavit filed in Original Petition No. 3544 of 1966 has stated that it had never approached respondents 3, 4 and 5 in this case to obtain concurrence for any conciliation proceedings, and that this original petition has been filed as a result of a misconception. It is unnecessary to consider whether this petition has been filed on any misconception as contended for by the first union or on a reasonable apprehension that the union would arrive at a settlement by conciliation behind the back of the third union as alleged by it. In the light of the settlement arrived at between the company and the first union as per Ex. P. 4 and the notices Exs. P. 5 and P. 6 issued by the District Labour Officer. Always, for convening joint conferences of the company and the second and the third unions for settlement of the demands raised by them, as well as the submission made of the learned Government Pleader appearing on behalf of the State and the Labour Department to the effect that they do not propose to give concurrence to any settlement arrived at without the participation of the second and the third unions, the question of issuing a writ of mandamus or any other writ of direction as prayed for in this original petition does not arise. Original Petition No. 3544 of 1966 is accordingly dismissed.

5. The petitioner in Original Petition No. 4377 of 1966 raised the following points:

(i) Exhibit P. 1 is a valid conciliation settlement; and it provides, among other things, that the first union shall be the sole collective bargaining agent for the workmen of the company. Hence, during the currency of this settlement, no other trade union is entitled to represent any section of the workmen of the company and raise an industrial dispute on their behalf.

(ii) Assuming that the second and the third unions are entitled to raise a dispute, a settlement by conciliation at the instance of these unions would bring into existence two sets of settlements in the same industry leading to conflict and confusion. Under these circumstances, the conciliation officer should not be permitted to exercise his jurisdiction u/s 12 of the Act.

6. It is claimed on behalf of the first union that Ex P. 1 is a conciliation settlement, This claim is disputed by the second and the third unions. The third union states in Para. 4 of its counter-affidavit dated 26 January 1967:

The long-term settlement referred to in Para. 5 was not a conciliation settlement. It was a bipartite(sic) settlement negotiated and entered into, between the management and the petitioner-union. In fact at the time when the settlement was negotiated and entered into, there was not a live industrial dispute at all. The settlement was not the result of any conciliation initiated by the conciliation officer or brought about on his initiative or effort. The officer has just signed a bipartite(sic) settlement entered into between the management and the petitioner-union.

There is no sufficient material before me to hold that Ex. P. 1 is a conciliative settlement.

7. The contention of the first union that during the currency of Ex. P. 1, no trade union other than the first union is entitled to espouse the cause of the workmen of the company is based on two clauses appearing in Ex. P. 1, which according to the first union constitute a valid agreement binding on the company and all the workmen. The first clause relied on appears in the "short recital of the case" in Ex. P. 1 and is in these terms:

The long-term agreement and conciliation settlement dated 12 June 1963 between the Indian Aluminium Company, Ltd., Alupuram Works, and the Aluminium Factory Workers" Union which has been recognized as the sole collective bargaining agent for the workmen of the company provides that Article VI of the said settlement shall be revised when the new smelter is commissioned and/or by statutory obligations regarding bonus payment including profit-sharing bonus arise during the pendency of the agreement.

This second clause relied on appears in the statement of the premises in Ex. P. 1 and it is in these terms:

whereas the union has been recognised as the sole collective bargaining agent for the workmen as defined in Section 2(s) of the Industrial Dispute Act, 1947, as amended from time to time, now employed and hereafter employed by the company during the life of this agreement.

It is clear from Rs. P. 1 that the above clauses do not form part of the agreement arrived at between the parties as per Ex. P. 1. On the other hand, they refer to or recite a fact regarding which there was no dispute as between the parties. These two clauses only state that the company had recognized the first union in Ex. P. 1 as the sole bargaining agency for the workmen of the company. So, Ex. P. 1 cannot afford any support to the contention that it continues an agreement to the effect that no trade union other than the first union can be recognized during the currency of Ex. P. 1 for espousing the cause of any section of the workmen of the company.

8. The contention that such an agreement would preclude any other trade union from representing the workmen, or raising any dispute on their behalf is not also legally sustainable, irrespective of the fact whether Ex. P. 1 is a bipartite settlement or conciliation settlement. Section 2(k) of the Act defines " industrial dispute." and it reads as follows:

"Industrial dispute" means any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person;

" Settlement" means a settlement of an Industrial dispute; and a dispute whether a particular trade union alone is competent to represent the workmen of

an industry or other trade unions are also competent to represent them is not obviously an " industrial dispute" as defined in the Act. It is also obvious that an agreement between a trade union and an employer not to recognize any other trade union as representing the workers has no legal effect. It is a fundamental right of the workers to form trade unions; and any trade union satisfying the requirements of the Trade Unions Act, 1926, is entitled to registration. Existence of more than one trade union in an industry is ordinary; and everyone of them is entitled to espouse the cause of the workmen, whom it represents. A contention to the contrary is hardly statable. A Division Bench of this Court in *Monthly-rated workmen of Peirce Leslie and Co. Ltd. Vs. Labour Commissioner and Others*, said (at p. 792);

The Indian Trade Unions Act, 1920, permits more than one association of workmen in the same establishment and does not endow any one of these associations with a monopoly of the right of representation on the basis of superior strength of its membership or for any other reason....

Dealing with the same question, a Division Bench of the Madras High Court in *Buckingham and Carnatic Co. Ltd., Madras Vs. Buckingham and Carnatic Mills Staff Union and Another*, said (at p. 782):

So far as we aware, there is no provision of law which prohibits the existence of more than one union or association of employees in a particular industrial establishment. There is nothing to prohibit each section of the establishment having a union the membership of which is confined to the employees in that section. Even if all the employees in an establishment are employed in the same kind of work, there may be two different unions with separate membership. There may also be several industrial establishments the employees in which are not members of any union at all. In this country as yet there is no organized system of recognized collective bargaining unite in respect of each industrial establishment or sections thereof.

It, therefore, follows that the contention of the first union that it alone is competent to espouse the cause of the workmen of the company, cannot be sustained either under law or on the facts of the case.

9. There is no controversy that Ex. P. 4, being only an agreement between the company and the first union, does not bind the workmen who are not members of the first union. Its learned Counsel, however, contended that the non-members have also accepted the agreement and have been enjoying the benefits thereof, that Ex. P. 4 was consequently binding on all the workmen and that there was no industrial dispute for conciliation as alleged by the second and third unions. This contention cannot be accepted. The second and third unions deny that the member of their unions have accepted Ex. P. 4. The fact that a few members of the second and third unions have accepted Ex. P. 4-assuming it to be true -would not debar these unions from raising demands on behalf of the workmen whom they represent. The main question that arises for consideration

is whether the conciliation officer can be permitted to effect a conciliation settlement of the demands raised by the second and third unions, in view of the fact that there is already a bipartite settlement as per Ex. P.4. which is binding on the majority of the workmen represented by the first union, and the proposed conciliation proceedings would rake up fresh disputes, and upset the bipartite settlement. Section 18 of the Act provides on whom settlements and awards are binding; and according to Sub-section (3) of this section, a settlement arrived in the course of conciliation proceedings under this Act shall be binding on all parties to the industrial dispute, and where one of the parties is composed of workmen, it shall be binding on

all persons who were employed in the establishment or part of the establishment as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently became employed in that establishment or part.

In *Ramnagar Cane and Sugar Co. Ltd. Vs. Jatin Chakravorty and Others*, the Supreme Court has clearly indicated the extent of the applicability of a conciliation settlement. The Court said (at p. 247-348):

...Section 18(1) provides that a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliate on proceeding shall be binding on the parties to the agreement; whereas Section 18(3) provides a settlement arrived at in the course of conciliation proceedings which has become enforceable shall be binding on all the parties specified in Clauses (a), (b), (c) and (d) of Sub-section (3). Section 18(3)(d) makes It clear that, where a party referred to in Clause (a) or (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in the establishment or part, would be bound by the settlement. In other words, there can be no doubt that the settlement arrived at between the appellant and the employees' union during the course of conciliation proceedings on 55 February 1954, would bind not only the members of the said union but all workmen employed in the establishment of the appellant at that date. That inevitably means that the respondents would be bound by the said settlement even though they may belong to the rival union. In order to bind the workman it is not necessary to show that the said workmen belong to the union which was a party to the dispute before the conciliator. The whole policy of Section 18 appears to be give an extended operation to the settlement arrived at in the course of conciliation proceedings, and that is the object with which the four categories of pass one bound be such settlement are specified in Section 18, Sub-section (3)....

In view of the clear statement of the law contained in the above decision, it is unnecessary to refer to any more decisions on this point.

10. So what happens, if a conciliation settlement is arrived at pursuant to the disputes raised by the second or third union, is this. There is already a bipartite

settlement binding on the company and the majority of the workmen represented by the first union. A conciliation settlement reached between the company and, say, the second union, would be binding on the company and all the workmen of the company including the members of the first and third unions, even though they are not agreeable to the settlement. It would naturally be open to the parties to the conciliation proceedings to deal with the matters dealt with in the bipartite settlement, including the scope of its applicability. If the parties to the conciliation proceedings do not come to a settlement, the conciliation officer has to report the matter to the appropriate Government. The Government, if satisfied that there is a case for reference, may refer it for adjudication, and the award passed in the adjudication would be binding on the company and all its workman. The result that a bipartite settlement arrived at between the company and a majority of its workmen would be upset, and a conciliation settlement or an industrial award, which may not be to the satisfaction of the majority of the workmen, would be allowed to prevail. The learned Counsel for the first union submitted that this defeats the very object of the Act, and the purpose of industrial settlements, and that, under such circumstances, the conciliation officer or the Government should not exercise jurisdiction u/s 12 or 10 of the Act, as the case may be. This contention appears to have some force at first blush. But a closer examination of the guiding principles to be followed in effecting a conciliation settlement or making an industrial award, would show that the apprehension expressed by the learned Counsel is not Justified. A conciliation officer or industrial tribunal, in effecting a settlement or making an award, as the case may be, has always to take into account the conflicting claims between the employer on the one hand and the employees on the other hand, and the views of the different groups of the workers as well as all those relevant factors which would lead to the well-being of the industry, and a satisfactory settlement of the disputes. This necessarily means that adequate consideration must be had to the demands and view-points of the majority of the workers, The scheme of the Act is that it reposes confidence in the conciliation officers and the industrial tribunals in these matters. Reference may be made in support of the above position to the decision of the Supreme Court in *The Bata Shoe Co. (P) Ltd. Vs. D.N. Ganguly and Others*, . Referring to Section 18 of the Act, the Court said (at p. 308):

... As we read this provision we feel that the legislature when it made a settlement reached during the course of conciliation proceedings binding not only on the parties thereto but also on all pre-sent and future workmen intended that such settlement was arrived at with the assistance of the conciliation officer and was considered by him to be reasonable and therefore had his concurrence....

11. The learned Counsel for the first union relied on the decision of the Supreme Court in *Sirsilk, Ltd. and Anr. v. Government of Andhra Pradesh and Anr.* 1963 1 LLJ 647 in support of his contention. In this case a bipartite settlement of certain disputes, which had been referred for adjudication to an industrial tribunal, was reached between the workmen and their employer, after the tribunal had

submitted its award to the Government. u/s 17 of the Act, the Government is bound to publish the award within thirty days of its receipt, and the award shall then become final. Paranent(sic) to the settlement, the workmen and employer jointly moved the Government not to publish the award ; but the Government expressed their inability to withhold the publication of the award, in view of the provisions contained in Section 17. Thereupon, the employer filed a writ petition in the High Court to restrain the Government from publishing the award, on the ground, among other that there was no industrial dispute, as it had been already settled between the workmen and the employer, and that the publication of the award may cause conflict between the award and the settlement. The High Court did not accept this contention and dismissed the writ petition. The employer filed an appeal to the Supreme Court which upheld the employer's contention and allowed the appeal. Stating the reasons for its decision the Supreme Court said (at p. 651):

The reference to the tribunal is for the purpose of resolving the dispute that may have arisen between employers and their workmen. Where a settlement is arrived at between the parties to a dispute before the tribunal after the award has been submitted to Government but before 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 inffuotuous and so the Government should refrain from publishing such an award because no dispute remains to be resolved by it.

The Supreme Court also observed (at p. 651):

...The settlement having thus become binding and in many cases having already come into operation, there is no scope for any inquiry by the Government as to the bona fides of the settlement. In such a case. In view of the possibility of conflict between the settlement in view of its binding nature u/s 18(1) and an award which might become kinding on the publication u/s 18(3), the proper course for the Government is to withhold the award from publication to avoid this conflict....

In my opinion, this decision does not help the contention of the learned Counsel for the first union. The situation in the instant case is entirely different. In this case, there is no settlement binding on or accepted by the entire workmen. Two sections of the workmen represented by the second and third unions question the validity and propriety of the settlement reached between the first union and the company as per Ex. P. 4. The second and third unions have the right to raise industrial disputes; and if any such dispute is raised, the conciliation officer is bound to act u/s 13 or the Act. This right cannot in any manner be affected by a settlement effected between the company and the first union.

12. I have already referred to the circumstances under which the settlement as per Ex. P. 4 was arrived at. It was done in the teeth of opposition by the second and third unions, and is the face of legal proceedings instituted by the third union

resisting the attempt of the first union to effect any settlement binding on the clerical staff which the third union represented. The attempts, which were being made by the conciliation officers for a settlement of all disputes raised by all the three unions, were also ignored. The first union admittedly represents the majority of the workmen ; and it is quite possible that the company was coerced to enter into a settlement with this union alone. It may also be to its advantage to recognize only one union, if possible. But I can find no justification for the first union" to aggregate itself as the sole representative of the whole workmen of the company, which obviously it is not, and effect a negotiated settlement with the company behind the back of the remaining two unions and ignoring the efforts of the conciliation officers for settlement of all disputes.

13. In the result, I dismiss Original Petition No. 4377 of 1968 also. The petitioner will pay the costs of respondent 5, the Indian Aluminium Company Office Staff Association; who is the main contesting party in this case. Counsel's fee is fixed at Rs. 200. The remaining parties will bear their own costs.