

(1995) 07 BOM CK 0064

In the Bombay High Court

Case No : Writ Petition No. 1579 of 1990

Pieco Electronics and Electricals Ltd., Pune

APPELLANT

Vs

Philips Employees Union and Others

RESPONDENT

Date of Decision : 19-07-1995

Acts Referred:

Constitution of India, 1950 — Article 227

Industrial Employment (Standing Orders) Act, 1946 — Section 10, 10A

Citation : (1995) 07 BOM CK 0064

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

B.N. Srikrishna, J.—This writ petition under Article 227 of the Constitution of India impugns an order of the Industrial Court - Appellate Authority - under the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as "the Act") made in Appeal (IESO) No. 1 of 1989 dated 4th August 1989.

2. The petitioner is a company which has Certified Standing Orders of which Standing Orders No. 25(5-A) makes provision for payment of subsistence allowance to workmen suspended pending inquiry. The said Standing Order requires the subsistence allowance be paid to a suspended workman provided that the rate fixed shall not be less than one-third of the basic wages and dearness allowance drawn by the workman immediately prior to his suspension. By a settlement dated 13th June, 1988, between the petitioner company and the first respondent Union, several conditions of service of the workmen employed in the petitioner's establishment were settled. Clause 25 of the said settlement provides that no demand involving financial burden would be raised during the operative period of the said settlement. It is not in dispute that the settlement dated 13th June, 1988 was operative and binding upon the parties at the material time.

3. By a Notification issued in Maharashtra Government Gazette, Part I-L, dated 17th November, 1977, pages 6812-18, the Government of Maharashtra amended

the Model Standing Orders by insertion of Model Standing Order 5-A which requires payment of subsistence allowance to a workman placed under suspension. The said Model Standing Order provides for subsistence allowance at graded rates. For the first ninety days, an amount be equivalent to one-half of the total emoluments is to be paid as subsistence allowance. If the inquiry continues beyond the first ninety days, the rate of subsistence allowance to gets increased to three-fourths of the total emoluments and, if the inquiry is not completed within a period of 180 days, 100 per cent of the monthly emoluments is to be paid during the pendency of the inquiry. By an amendment made by Act No. 18 of 1982, the Parliament inserted section 10A in the Industrial Employment (Standing Orders) Act, 1946 with effect from 17th May, 1982. Under the newly added Section 10A, subsistence allowance is required to be paid to suspended workman at the rate of 50 per cent of the wages for the first ninety days of suspension, which would thereafter be increased to 75 per cent of such wages, if the workman is not responsible for the delay in completing the inquiry.

4. The first respondent moved the Certifying Officer by its application dated 10th July, 1987 and requested him to exercise his powers u/s 10(2) of the Act to amend the existing Certified Standing Orders along the lines indicated in the application. As a matter of fact, the application requested for an amendment of existing Certified Standing Orders to bring them in line with the Model Standing Order 25(5-A). By his order dated 20.1.1989, the Certifying Officer allowed the application and directed that the existing Standing Order Clause 5-A shall stand modified as proposed. The petitioner company had raised two contentions while objecting to the proposed modification - (a) that the Certifying Officer had no jurisdiction to entertain the application and, (b) that during the period of operation of the settlement dated 13th June, 1988, in the teeth of Clause 25 thereof, the first respondent was estopped from raising a demand which would have the effect of imposing additional financial burden on it. The Certifying Officer rejected both contentions and allowed the application.

5. The petitioner company, by its Appeal (IESO) No. 1 of 1989, appealed against the order of the Certifying Officer to the Industrial Court, Pune. The same two contentions reiterated in the appeal, were rejected by the Appellate Authority. Hence, this writ petition.

6. Though Mr. Nerlekar, learned Advocate appearing for the petitioner company, reiterated the petitioners' contention that the Certifying Officer has no jurisdiction to incorporate a Standing Order on the subject matter of subsistence allowance as the said subject was not enumerated in the schedule of the Act, in my view, it is not necessary to decide this somewhat intricate question of law as the petition is liable to be allowed on the other ground. This issue is not decided and kept open for a decision in an appropriate case in future.

7. The second contention urged before two authorities below, and here, is that the first respondent union and the workmen were precluded from agitating the issue as to amendment of the Certifying Standing Orders to bring them in line

with the Model Standing Order 25(5-A), as such amendment would necessarily impose additional liability on the petitioner company; that such demands were expressly precluded by Clause 27 of the binding settlement dated 13th June, 1988. Mr. Nerlekar drew my attention to the judgment of the Supreme Court in Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Ltd., in support of the contention urged. There is merit in this contention which needs to be accepted.

8. In Barauni Refinery case there was a settlement between the employer and the Workmen on several subjects. The settlement contained two clauses - 19 and 21, which are material for us. Clause 19 was a reiteration that such terms and conditions of service as were not changed under the settlement shall remain unchanged and operative for the period of the settlement. Clause 21 was somewhat similar to Clause 25 in the petitioners' settlement, barring the workmen from raising any demand likely to throw additional burden on the employer during the pendency of the settlement. During the pendency of the said settlement, the workmen moved for an amendment of the Certified Standing Order as to age of superannuation, to raise the age of superannuation from 58 to 60. The Supreme Court held that raising the age of superannuation from 58 to 60 would necessarily result in additional financial burden on the employer, and, therefore, it was precluded and barred by Clause 21 of the operative settlement between the parties. (We are not concerned here with the legal effect of Clause 19 of the settlement discussed by the Supreme Court in paragraph 9 of the judgment).

9. Mr. Nerlekar's contention is right and supported by high authority. During the admitted period of operation of the settlement dated 13th June, 1988 containing Clause 27 precluding the raising of further disputes likely to have financial repercussions on the employer, it was not open for the first respondent Union to seek sanction of Certifying Officer so as to incorporate the provisions of Model Standing Order 25(5-A) into Standing Orders. It cannot be disputed that, Model Standing Order Clause 25(5-A) certainly imposes additional financial burden on the Employer. Consequently, both authorities below were wrong in summarily rejecting this contention without careful application of mind thereto. On this ground alone, the petition is liable to be allowed and must succeed.

10. It is pointed out by Mr. Nerlekar that consequent upon coming into force of Section 10A of the Act, which grants better benefits with regard to subsistence allowance, they are bound to implement and are implementing the terms as to subsistence allowance prescribed u/s 10A of the Act introduced from 17th May, 1982.

11. Mr. Dharap contends that Section 10A of the Act prescribes only the minimum conditions of service with regard to subsistence allowance and that it was open to the workmen to ask for better conditions of service. Since the provision of Model Standing Order 25(5-A) was necessarily a better service condition. The workmen were entitled to "demand and obtain the same by the

adjudicatory process under the scheme of the Act. Even assuming Mr. Dharap is right in his contention that conditions of service as to subsistence allowance prescribed in Section 10A of the Act represent merely the desideratum, the workmen are precluded from making higher demands during the pendency of the settlement dated 13th June, 1988 by reason of the bar in clause 27.

12. In the result, the writ petition is hereby allowed. Rule made absolute. The order of the Certifying Officer dated 20th January, 1989 and that of the Appellate Authority dated 4th August, 1989 made in Appeal (IESO) No. 1 of 1989, are hereby quashed and set aside. The Application dated 10th July, 1987 made by the first Respondent for modification of the Standing Orders, is hereby dismissed.

13. Rule made absolute accordingly with no order as to costs.

14. Certified copy expedited.