

(1956) 06 BOM CK 0003

In the Bombay High Court

Case No : Special Civil Application No. 360 of 1956

Poona Mazdoor Sabha

APPELLANT

Vs

Dhutia G.K. and Another (Esco Ltd.)

RESPONDENT

Date of Decision : 27-06-1956

Acts Referred:

Industrial Disputes Act, 1947 — Section 12, 12(1), 19(12), 19(2), 22

Citation : (1956) 2 LLJ 319

Hon'ble Judges : M.C. Chagla, C.J.;P.V. Dixit, J

Bench : Division Bench

Judgement

Chagla, C.J.—This petition raises a rather important question with regard to conciliation proceedings under the Industrial Disputes Act. It appears that there was a dispute between the second opponent company and its workers with regard to wages, dearness allowance, leave facilities, etc., and on 30 January, 1955 a meeting of the workers was called where one Mahadik was authorized by his co-workers to make representations to the second opponent company with regard to their demands. The second opponent company wanted to negotiate with the workers who had a representative capacity and therefore the Government labour officer was approached to hold a meeting at which representatives of the workers would be elected under his supervision. Accordingly a meeting was held on 17 March, 1955 at which five workmen were elected by the workers present to be their representatives. On 7 April, 1955 the second opponent company and the elected representatives of the workers wrote a letter to the conciliation officer to the effect that they had come to a negotiated agreement in regard to the demand relating to wages, dearness allowance and leave facilities and that they desired to sign memorandum of settlement before him. Accordingly on 11 April, 1955 both the parties appeared before the conciliation officer, the first opponent, and produced before him a draft agreement. This draft agreement was considered by the conciliation officer and he explained to the elected representatives of the workers in Marathi the various terms of the agreement, the agreement having been drafted in English. There

was considerable discussion over each clause of the agreement and one of the terms was modified by the conciliation officer and the parties appearing before him approved of this modification. The whole discussion lasted about an hour. The conciliation officer then adjourned the proceedings, advising the elected representatives to consult the other workers and their advisers before coming to a final decision in the matter. The elected representatives then saw the first opponent in the afternoon and approved of the draft agreement as was modified. Thereupon a memo of settlement was prepared in the prescribed form and was signed by the parties. On 1 April, 1955 the petitioner-union was formed and it was registered on 1 June, 1955 and on 23 June, 1955 the union made certain demands upon the second opponent company, which demands were the subject-matter of the settlement already arrived at. As the employer-company, the second opponent, was not prepared to concede these demands, the petitioner approached the first opponent to initiate conciliation proceedings under the Industrial Disputes Act. The first opponent refused to do so on the ground that there was a subsisting statement arrived at between the parties and so long as that settlement continued he had no jurisdiction to initiate conciliation proceedings under the Act. It may be pointed out that the duration of the settlement as mentioned in the settlement itself was five years. The view taken by the first opponent was that the settlement was binding upon the parties for the period mentioned in the settlement and so long as the settlement was binding it was not open to him to initiate conciliation proceedings under the Act. The petitioner has come before us on this petition for a writ of mandamus against the first opponent to compel him to perform his statutory duty and to initiate conciliation proceedings under S. 12.

2. It has been very forcefully argued by Mr. Bhandare on behalf of the petitioner that the settlement between the parties had already been arrived at before the parties approved the conciliation officer, and according to him the conciliation officer had no jurisdiction to record the settlement which he did on 11 April, 1955. For this purpose attention is drawn to S. 12 of the Act. Sub-section (1) of that section provides :

"Where any industrial dispute exists or apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under S. 22 has been given, shall hold conciliation proceedings in the prescribed manner."

3. What is argued by Mr. Bhandare is that the condition precedent to the jurisdiction of the conciliation officer to hold conciliation proceedings is the existence or apprehension of an industrial dispute, and it is pointed out that in this case the industrial dispute had come to an end with the settlement arrived at between the parties on 7 April, 1955. It is therefore urged that the conciliation officer recorded the settlement on 11 April, 1955 by holding conciliation proceedings when there was no industrial dispute in existence nor was any industrial dispute apprehended. It is said that S. 12(1) does not permit the conciliation officer to hold conciliation proceedings merely for the purpose of

recording a settlement which has already been arrived at. Conciliation proceedings can only be held when there is an industrial dispute or an industrial dispute is apprehended. We will assume for the sake of this argument that there was an agreement arrived at between the parties antecedent to 11 April, 1955 and on this assumption we have to ask ourselves the question whether that would exclude the jurisdiction of the conciliation officer to record the settlement arrived at.

4. In our opinion, what we have to consider is : When does an industrial dispute cease to exist from the point of view of industrial law ? In this case, admittedly, there was an industrial dispute. Can it be said that the industrial dispute had ended because the parties to the dispute have come to a private agreement ? The object of the Industrial Disputes Act is to bring about industrial peace and there is no industrial peace unless there is an agreement between the contending parties which is binding upon them and which they are bound to respect in law. The only settlement between the parties which is binding is the settlement arrived at through the instrumentality of the conciliation officer. That is clear from the provisions of S. 19(12). It is only that settlement upon which the law has its imprimatur and to which the law has given sanctity and which the law has made binding. Industrial law takes no notice of any private settlement or agreement arrived at between the parties in the course of an industrial dispute. Such a private agreement belongs to the realm of contract; it may give rise to contractual rights; but when we are dealing with industrial law it has no sanction whatsoever, and therefore, in the eye of the industrial law, in our opinion, an industrial dispute does not end until a settlement is arrived at, which settlement has been given a binding effect under the provisions of S. 19(2), and such a settlement can only be arrived at when conciliation proceedings are held under S. 12.

5. Therefore, it would not be true to say that the industrial dispute ended with the settlement arrived at between the parties on 7 April, 1955, that the conciliation officer had no jurisdiction to record the settlement, and that in raising another dispute in June 1955 the union was raising a dispute which was not and could not be the subject-matter of a settlement contemplated by Ss. 12 and 19(2).

6. The next material question to consider is : If the conciliation officer had jurisdiction to hold conciliation proceedings under S. 12 notwithstanding a settlement between privately arrived at between the parties, does the fact that there is a binding settlement between the parties under S. 19(2) prevent one of the parties to that settlement from raising an industrial dispute ? It may be said that there is no specific provision in the Act which lays down that an industrial dispute cannot be raised with regard to matter which is the subject of a settlement under S. 12 read with S. 19(2). But in our opinion what we have to consider is the effect of the legislature providing that under S. 19(2) a settlement arrived at in the course of a conciliation shall be binding for such period as is

agreed upon by the parties, and if no such period is agreed upon, for a period of six months, and that section also provides for a proper notice being given terminating the settlement after the expiry of the period mentioned in the earlier part of the section. When the legislature provides for a particular agreement being binding upon the parties to an industrial dispute, it clearly intends that there is industrial peace with regard to the subject-matter of the agreement for the duration of that agreement and it obvious that if there is to be industrial place for the period contemplated, then neither party to that settlement can be allowed to raise an industrial dispute with regard to that settlement.

7. Considerable light is also thrown upon the proper construction of S. 19(2) by the provisions contained in that section with regard to an award. An award is a superimposed decision and the parties to the award have to abide by it whether they like the terms of the award or not, and in the case of an award specific powers are given to Government to curtail its duration, to extend it, and in cases where Government considers that since the award was made there has been a material change in the circumstances on which it was based, to refer the award or part of it to a tribunal for decision whether the period of operation should not be by reason of such change be shortened. Therefore, it is clear that but for this specific provision with regard to an award the position of an award in law would have been the same as that of a settlement. An a award being as binding in its nature as a settlement, the legislate had to give specific power to the Government to interfere with the finality of that award by empowering Government to refer it to a tribunal under circumstances mentioned in S. 19(4). But the legislature advisedly did not confer that power upon Government with regard to a settlement arrived at between the parties, and the reason for the legislature not doing so is obvious. As already said, an award is not the result of an agreement between the parties. It is something superimposed upon them by the force majeure of law. But a settlement is a purely voluntary matter and parties may or may not arrive at a settlement. But when parties do arrive at a settlement the law gives to it a greater sanctity than it gives to an award, and therefore the industrial law does not contemplate any interference with the finality of a settlement and it compels the settlement to run on for the period mentioned in the settlement itself and neither party is permitted to challenge that settlement during is duration. If the subject-matter of an award or a settlement could be raised as an industrial dispute, than it is clear that there was no reason for the legislature specifically to confer power upon Government with regard to referring an award for adjudication. If the absence of any such specific provision with regard to settlement, it is clear in our opinion that neither any industrial dispute can be raised with regard to the settlement, nor can matters covered by that settlement form the subject-matter of conciliation proceedings under S. 12.

8. In taking the view that we are, we are not deciding anything which is prejudicial to the rights of labour. If we were to accept the contention put forward by Mr. Bhandare, it would become extremely difficult for employer and

employees to arrive at any settlement without first going to a conciliation officer. If the law was that a private settlement of an industrial dispute could not be arrived at which could be recorded by the conciliation officer and which could be made binding, then it would be very difficult to induce parties to arrive at any such settlement, because the whole of Mr. Bhandare's argument revolves round this that it was open to the workers of the second opponent company the next day after they had arrived at this agreement to resile from that agreement. Industrial peace demands that sanctity should be attached to agreements freely arrived at by the parties and if the view went abroad that private settlements have no sanctity whatsoever, then there would be little chance of disputes ending by settlement between the parties. It will indeed be extremely unfortunate from the point of view of labour.

9. Mr. Seervai has also raised the point that under S. 12 it is discretionary with the conciliation officer to hold conciliation proceedings or not. It is only when the dispute relates to a public utility service and a notice under S. 22 has been given that there is a statutory duty cast upon him to hold conciliation proceedings. Although the conciliation officer has a discretion, it is obvious that discretion cannot be arbitrarily or capriciously exercised, and if we had agreed with the contention put forward by Mr. Bhandare then we would certainly have required the conciliation officer to consider the question on merits and exercise his discretion as required by the statute. But inasmuch as we have taken the view that conciliation proceedings cannot be initiated when there is a settlement in force, the question of the exercise of the discretion of the conciliation officer does not arise.

10. The result is that the petition fails and is dismissed. No order as to costs.