
(1974) 01 AP CK 0007
In the Andhra Pradesh High Court

Praga Tools Limited

APPELLANT

Vs

Praga Tools Limited, Mazdoor Sabha and Others

RESPONDENT

Date of Decision : 16-01-1974

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12, 18, 2, 22

Citation : (1974) 1 APLJ 275 : (1975) 1 LLJ 218

Hon'ble Judges : Obul Reddi, J

Bench : Single Bench

Judgement

Obul Reddi, J.—This writ petition is filed by the petitioner Praga Tools Ltd., challenging the award of the Labour Court in industrial Dispute No. 35 of 1969 overruling the preliminary objection raised by the petitioner, viz., that in view of the settlement arrived at between the parties in the course of the conciliation proceedings, the question of raising any industrial dispute by the workmen or referring it u/s 10(1) of the Industrial Disputes Act, does not arise.

2. The petitioner is a public sector industry. There are two rival unions in this industry, one is called the Praga Tools Employees Union and the other Praga Tools Mazdoor Sabha. While the former is affiliated to the All India Trade Union Congress, the latter is affiliated to the Indian National Trade Union Congress. Under the standing orders of the company, there are five categories of workmen, viz., (1) permanent; (2) probationer ; (3) apprentice; (4) trainee and (5) casual workmen. The permanent workmen are again sub-divided into classes (A) and (B).

3. There was a reorganisation in the year 1958 and the workmen belonging to the various categories were fitted into these grades. In 1967 an agreement was brought about by the conciliation officer between the Praga Tools Employees Union and the management. The other union was not a party to that agreement. Under that agreement, there was categorisation of workmen into four categories with different grades of pay.

- (1) Unskilled workmen were to be in the grade of Rs. 70-4-110.
- (2) Semi-skilled workmen in the grade of (a) 85-5-135; (b) 95-5.145; and (c) 100-6-160.
- (3) Skilled workmen in the grade of (a) 130-8-210; and (b) 145-9-235-10-255.
- (4) Highly skilled workmen in the grade of 160-12-280-15-310.

The Mazdoor Sabha workmen lodged their protest against the settlement. It is the case of the Mazdoor Sabha that the management in collusion with the other union, brought about the settlement, the result of which is that many juniors were given higher grades and some in the semi-skilled and unskilled category were placed in the skilled or highly skilled workmen category. Sixty-eight of the workers belonging to the Mazdoor Sabha, on the ground that they were not parties to the settlement and that the settlement does not provide for fitment into various categories, raised an industrial dispute through their union and hence the reference to the Labour Court,

4. It was the case of the petitioner before the Labour Court that the settlement arrived at in 1967 is binding on all the workmen, to whichever union they belonged, as it was a settlement brought about in the course of the conciliation proceedings and that it cannot be varied or any dispute raised in regard to its terms.

5. It was further their case that the dispute raised by them is not covered by the terms of the settlement, as the settlement does not speak of fitment of the Mazdoor Sabha workmen in an appropriate category and, therefore, they were entitled to raise a dispute and as such the reference cannot be questioned as being illegal and invalid.

6. The Labour Court on a consideration of the terms of the settlement, overruled the preliminary objection raised by the petitioner and held that the reference is valid and in accordance with the provisions of law. It is this order that is now assailed in this writ petition by the management.

7. Therefore, the main question that arises in this writ petition is whether the settlement arrived at was in the course of the conciliation proceedings, so as to say that the settlement is binding upon the workmen of Mazdoor Sabha also in view of the provisions of Section 18(3)(d) of the Industrial Disputes Act.

8. Mr. P.R. Ramachandra Rao, the learned Counsel for the petitioner, contended that the settlement in question was one brought about by the conciliation officer and therefore, that settlement is binding on all persons who were employed in the establishment as it was arrived at only with reference to classification of workmen into various categories and their fitment into a particular category. Mr. M. Panduranga Rao, the learned Counsel appearing for the first respondent-union, contended that the settlement cannot be implemented as it was not one reached in the course of conciliation proceedings and even if it is to be held that

it was a settlement arrived at in the course of conciliation proceedings, it is not binding upon these workmen of Mazdoor Sabha as they were not parties to the conciliation proceedings; and even otherwise, the terms of the settlement do not cover the dispute raised by the workmen of the first respondent-union regarding fitment to an appropriate category.

9. In support of his contention Mr. M. Panduranga Rao invited my attention to the fact that the conciliation officer had prior to the settlement in question, reported failure of his efforts to bring about conciliation between the management and the workmen and therefore, any settlement reached subsequent thereto would not be a settlement u/s 18(3)(d) but would be one u/s 18(1) of the Act.

10. u/s 4, the Government is empowered to appoint conciliation officers charged with the duty of mediating in and promoting the settlement of industrial disputes. His duties are detailed in Section 12. Where any industrial dispute, exists or is apprehended, he is to hold conciliation proceedings in the prescribed manners, He has also to, for purposes of bringing about the settlement of the dispute, without any delay, investigate the dispute and all matters affecting the merits and the right settlement thereof. He is further empowered to do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute. If a settlement is brought about by him in the course of the proceedings, he sends up a report thereof to the Government, or to any officer authorised in this behalf together with a memorandum of the settlement signed by the parties. If no such settlement is arrived at then also he reports his failure to bring about a settlement relating to the dispute and submits a full statement of such facts and circumstances and the reasons for not being able to bring about the settlement. It is only when he reports failure of a settlement, that the Government, when it is satisfied that there is a case for reference to the Tribunal, makes a reference to the appropriate Tribunal. Here is a case where the conciliation officer admittedly pursued his efforts to bring about a settlement even after he reported failure to bring about a settlement between the workmen and the management. The fact that he reported u/s 12(4) that no settlement could be arrived at, will not debar him from making further efforts to bring about settlement between the management and the workmen. No such prohibition is imposed in the Act. It is his duty to do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute. If, after submission of the report to the Government, the parties approach him or if he feels that the parties are in a mood to relent or reconcile, it would be perfectly open to him to initiate fresh conciliation proceedings for bringing about a settlement of the dispute between the parties. My attention has not been invited to any provision in the Act, nor to any decision, which says that when once a conciliation officer makes a report under Sub-section (4) of Section 12 he becomes functus officio, and thereafter cannot hold conciliation proceedings to bring about an amicable settlement between the workmen and the management. It is the primary function of the conciliation officer to mediate in and promote

settlements in the interest of industrial peace. I am, therefore, of the opinion that there is no bar to hold conciliation proceedings, again, notwithstanding the fact that he had once reported failure to the Government. I do not think that it is the object or scheme of the Act that a conciliation officer should become functus officio when once he reports failure to bring about any settlement in respect of a dispute between workmen and management.

11. The settlement in question, it is next contended by the learned Counsel for the respondents, is not one made in accordance with the requirements of Rule 60. It is sought to be pointed out by him that on behalf of the workmen it has been signed only by the president and not by the secretary. There does not seem to be any basis for this argument, for I find that the agreement was signed not only by the president but also by secretary on 21st December, 1967. Rule 58 of the Andhra Pradesh Industrial Disputes Rules provides that a settlement arrived at in the course of conciliation proceedings or otherwise, shall be in Form "H" that the settle-ment shall be signed by ...(a) in the case of an employer, by the employer himself, or by his authorised agent or when the employer in an incorporated company or other body corporate, by the agent, manager or other principal officer of the Corporation; and (b) in the case of the workmen, by any officer of a trade union of the workmen or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose. The requirements of this rule are satisfied.

12. The preamble to the memorandum of the settlement would further make it clear that the settlement was arrived at in the course of the conciliation proceedings. The relevant portion reads:

...and several meetings were held between the parties before the conciliation officer but no settlement of the dispute could be arrived at, and the conciliation officer had to send a report to the appropriate Government accordingly; however, since that report was made by the conciliation officer the parties have explored further the possibilities of a settlement and requested the conciliation officer to resume the conciliation proceedings and lend his good offices towards arriving at a fair and amicable settlement of the dispute; and the parties thereupon have arrived at the following settlement of the dispute in a course of conciliation proceedings...

It is thus manifest that notwithstanding the fact that the conciliation officer reported failure, the parties concerned again approached the conciliation officer requesting him to use his good offices and the settlement of the dispute was brought about by the conciliation officer in the course of conciliation proceedings. It is, therefore, not a settlement which would be brought within the purview of Section 18(1) of the Act.

13. As regards the point raised by the learned Counsel that the conciliation officer has not applied his mind, though this question was raised before the Labour Court, the Labour Court has not answered that question on the ground

that it could be decided at the time when the reference is taken up for consideration. Whether the conciliation officer applied his mind and satisfied himself that that settlement was fair and reasonable, depends on the facts of each case. This is a question of fact which cannot be gone into by me at this stage, without the necessary material being placed before me. The preamble quoted above will go to show that the parties requested the conciliation officer to further pursue and then the settlement was reached. It is for the workmen to show that they were coerced to agree to come to terms or that the terms are unfair and unreasonable to them; In the absence of any material before me to substantiate the point, I am unable to hold that the conciliation officer had not applied his mind and satisfied himself that it is a fair and reasonable settlement.

14. It is next sought to be contended by the learned Counsel that inasmuch as the workmen of the first respondent were not parties to the conciliation proceedings, it is not binding upon the 68 workmen of the first respondent Mazdoor Sabha who raised the dispute. In support of this contention, the learned Counsel invited my attention to a decision of my learned brother Chinnappa Reddy, J., in Writ Petition No. 4687 of 1968, etc., dated 21st April, 1970. In construing Section 18(3)(d), the learned Judge observed that if some parties to the dispute failed to take part in the conciliation proceedings and some of them withdraw or otherwise disassociate themselves from the conciliation proceedings, it will not be open to the conciliation officer to proceed further with the conciliation proceedings and in such an event he can only report failure of the conciliation proceedings to the Government; that a settlement between a few of the parties in the absence of other necessary parties will not in those circumstances be a settlement in the course of conciliation proceedings; and that the conciliation officer is under a legal duty to bring together all the disputing parties and in that case before him the conciliation officer failed to discharge that duty. This is not a case where the parties to the dispute failed to take part in the conciliation proceedings or some of them withdrew or disassociated themselves. Therefore, that decision has no application to the facts of the present case. 15. A Division Bench of this Court, to which I was a party, in Writ Appeals Nos. 185 of 1971, etc., dated 11th February, 1972, explained the scope of Section 18(3)(d) in these terms:

It is clear from Clause (d) that irrespective of the fact whether all persons who were employed in the establishment or part thereof are represented or not, a settlement reached through the intervention or good offices of the conciliation officer is binding on all workmen who are employed in the establishment or part of the establishment, as the case may be, if the dispute relates to such workmen. It also binds not only those who were in service at the date of the dispute or at the date of the settlement, but also those who subsequently become employed in that establishment or part thereof.

In so holding the Division Bench followed what the Supreme Court said in *New India Motors (P) Ltd. New Delhi Vs. K.T. Morris*, , and *Ramnagar Cane and Sugar*

Co. Ltd. Vs. Jatin Chakravorty and Others, . Gajendragadkar, J. (as he then was) speaking for the Court observed in New India Motors case (1960) 19 F.J.R. 8 at page 14:

Even as a matter of construction pure and simple there is no justification for assuming that the workmen concerned in such disputes must be workmen directly or immediately concerned in the said disputes. We do not see any justification for adding the further qualification of direct or immediate concern which the narrow construction necessarily assumes. In dealing with the question as to which workmen can be said to be concerned in an industrial dispute we have to bear in mind the essential condition for the raising of an industrial dispute itself, and if an industrial dispute can be raised only by a group of workmen acting on their own or through their union then it would be difficult to resist the conclusion that all those who sponsored the dispute are concerned in it. As we have already pointed out, this construction is harmonious with the definition prescribed by Section 2(s) and with the provisions contained in Section 18 of the Act. Therefore, we are not prepared to hold that the expression "workmen concerned in such dispute" can be limited only to such of the workmen who are directly concerned with the dispute in question. In our opinion, that expression includes all workmen on whose behalf the dispute has been raised as well as those who would be bound by the award which may be made in the said dispute.

The same learned Judge again in Ramnagar Cane and Sugar Co. case (1960) 19 F.J.R. 99, observed at pages 103-104:

...In order to bind the workmen ((under Section 18(3)(d)) 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 to 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 persons bound by such settlement are specified in Section 18, Sub-section (3). This position has an important bearing on the construction of Section 22(1)(d). Thus, if a conciliation proceeding is pending between one union and the employer and it relates to matters concerning all the employees of the employer, the pendency of the conciliation proceeding would be a bar against all the employees of the employer employed in a public utility service to go on a strike during the pendency of the said proceeding u/s 22(1)(d). This construction would be consistent with the specific provisions as to the effect of conciliation settlements prescribed by Section 18(3)(d) and is harmonious with general policy of the Act; otherwise it would unnecessarily disturb industrial peace, if one union employed in a public utility service is allowed to go on strike even though demands common to the members of the said union as well as the rest of the workmen are being considered in conciliation proceedings between the said employer and his other employees represented by another union.

It is, therefore, well settled that, in order that a settlement reached in the course

of conciliation proceedings should be valid and binding on all the employees, it is not necessary that if there are several unions, all those unions should be represented. It is enough if the settlement reached is one which concerns all the employees of the employer or a dispute common to all the employees of the employer. As has been pointed out in *Bata Shoe Co. (P.) Ltd. v. D.N. Ganguly*. (1960) 20 F.J.R. 91, which is often relied upon and quoted subsequently by the Supreme Court and the High Courts, it is the duty of the conciliation officer to promote a right settlement and to do everything he can to induce the parties to come to a fair and amicable settlement of the dispute and it is only such a settlement which is arrived at while conciliation proceedings are pending that can be binding u/s 18,

16. The fact that the first respondent was not a party to the conciliation proceedings does not take away the binding effect of the settlement, as the dispute related to the categorisation of the workmen into various categories and fitment into different grades of pay. I am unable to agree with the finding recorded by the Labour Court, on which the learned Counsel for the first respondent placed strong reliance, that the dispute raised by the first respondent is not covered by the settlement. The relevant portion of the settlement reads thus;

IT. Grades for Technical Workmen and General Workmen:

(a) The following grades with the Wage scales set against each, will be introduced for Technical workmen and General workmen in the Industry with effect from 1-4-1968:

(i) Unskilled workmen Rs. 70-4-110 (ii) Semi-skilled workmen Rs. 85-5-135 Rs. 95-5-145 Rs. 100-6-160 (iii) Skilled workmen Rs. 130-8-210 Rs. 145-9-235-10-255 (iv) Highly skilled workmen Rs. 160-12-280-15-310 (b) The number of posts required in the two Divisions in each of the grades set out above will be determined jointly by the management and the union by an evaluation based on the skills required for different jobs, and in this process one nominee of the recognised union will be associated with the management. The two divisions will have separate evaluation teams doing this job. The team will consist of a technical representative of the management, a representative from F.A. (Financial Adviser) and a representative from the union.

(c) Workmen will be fitted into the respective grades on the basis of trade tests where necessary.

(d) The new grades above set out are being introduced on the clear and specific understanding that there will be no reduction in production by the workmen adhering to the existing work norms and that all effective endeavours will be whole-heartedly and sincerely made by the workmen for increasing production

Therefore, the above clause would make it abundantly clear that fitment of workmen into one or the other of the categories was the subject-matter of the

dispute and that was settled as provided in the above clause. I, therefore, hold that the settlement is binding on all the workmen including the workmen of the first respondent-union and the reference made by the Government is invalid and illegal.

17. The impugned order of the Labour Court is quashed and the writ petition is allowed, but without costs. Advocate's fee Rs. 100.