
(2017) 09 BOM CK 0089
In the Bombay High Court
Case No : 1149 of 2015

Pritam S/o. Balkrishna Raibole, & Ors. APPELLANT
Vs
M/s. Simplex Mills Company Ltd., & Ors. RESPONDENT

Date of Decision : 07-09-2017

Acts Referred:

[Industrial Disputes Act, 1971](#), Section 18(3), Section 250, Section 2(p), Section 250(5)

Citation : (2017) 09 BOM CK 0089

Hon'ble Judges : S.C.Gupte

Bench : SINGLE BENCH

Advocate : A.S.Dhore, R.B.Puranik, Sagar Katkar

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.
2. This petition challenges an award passed by Industrial Court, Akola in a reference. The subject matter of the reference concerns closure of respondent No.1 company and permission granted for such closure by the State Government.
3. Respondent No.1 is a company governed by the Bombay Industrial Relations Act, 1946, running textile mills at Shivni in Akola. By its application dated 29th April, 2008, respondent No.1 sought permission under Section 250 of the Industrial Disputes Act, 1971 (hereinafter referred as "the Act" for brevity) to effect closure of its undertaking. The application was opposed by respondent No.2 - recognized union and respondent No.3 Maharashtra Samarth Kamgar Sanghtana. By his order dated 25th September, 2008, the Commissioner of Labour, Maharashtra State, Mumbai allowed the application and permitted respondent No.1 to permanently close its industry at village Shivni in Akola. Respondent No.2, which is a recognized union of workmen of respondent No.1, thereupon challenged the permission for closure under subsection (5) of Section 250 of the Act. The challenge was registered as a reference before the Industrial

Court, Akola on an order passed by the Commissioner of Labour. On 12th August, 2009, the Industrial Court framed issues in the reference and fixed the matter for evidence. The reference was adjourned from time to time. On 27th January, 2012, whilst the reference was pending, respondent No.1 filed an application for allowing it to close the undertaking subject to the final decision of the Industrial Court in the reference. On 14th September, 2012, that application was allowed by the Industrial Court. This order was challenged by respondent No.3 before this Court in Writ Petition No. 4931 of 2012. Rule was issued by this Court on the petition and the impugned order of 14th September, 2012 was stayed with directions to the Industrial Court to decide the reference as expeditiously as possible. Whilst the reference was thus pending adjudication and the respondent continued to carry on its undertaking, on 5th April, 2014, respondent No.1 and the recognized union, i.e. respondent No.2, entered into an agreement of settlement, agreeing to the closure of the company with effect from 9th April, 2014. On 7th April, 2014, respondent No.2 filed an application before the Industrial Court for passing appropriate orders in terms of this settlement. This application was opposed by the petitioners along with some other employees through respondent No.3 union. On 9th April, 2014, the Industrial Court pronounced the operative part of the award, answering the reference in terms of the settlement arrived at between respondent Nos. 1 and 2. This pronouncement was initially challenged by petitioner Nos. 3 and 4 herein before this Court in Writ Petition No. 2038 of 2014. This Court, by its order dated 29th April, 2014, disposed of that writ petition with liberty to petitioner Nos. 3 and 4 to file a fresh petition after publication of the award. The award was declared on 27th May, 2014. The present petition is filed in pursuance of the liberty reserved.

4. Learned counsel for the petitioners submits, at the outset, that the reference pending before the Industrial Court could not have been disposed of by it simply on the basis of a settlement between respondent Nos. 1 and 2; the Court was duty bound to decide the reference on merits as ordered by this Court in its order dated 22nd October, 2012. Learned counsel relies on the judgment of a Division Bench of our Court in the case of N.R.C. Employees' Union Vs. Government of Maharashtra, reported in 2012(4) Bom.C.R.197 in support of his contentions. Relying on the decision of the Supreme Court in Oswal Agro Furane Ltd. Vs. Workers Union, reported in (2005) 3 SCC 224, learned counsel submits that a settlement arrived at between the employer and the union cannot override the mandatory requirements of Section 250 of the Act.

5. Before we take up the contentions raised by the petitioners in this behalf, it will be pertinent to note the following few salient facts : The textile mill run by respondent No.1 was suffering from heavy losses due to various reasons including, uneconomical size of the mill, low productivity of labour etc. In the premises, in September, 2008, it made an application for closure to the appropriate Government. After considering the propriety of such closure, the Government granted permission to effect closure under Section 250 of the Act. The challenge to this permission on the part of the Union resulted into the

present reference. The permission to effect closure during the pendency of the reference having been stayed by this Court, respondent No.1 continued to run the undertaking and claims to have incurred further losses. It is submitted that due to its inability to purchase raw material, its production came to a standstill on 13th December, 2013 and even the power supply was disconnected on account of its inability to pay the power bills. With no production activity, respondent No.1 continued to run its undertaking, paying wages to its employees upto February, 2014. In the circumstances, respondent No.1 negotiated a settlement with the recognized union and finally entered into an agreement on 5th April, 2014. The agreement specifically provides that all employees of respondent No.1 shall be paid gratuity as per the provisions of the Payment of Gratuity Act as also closure compensation at the rate of 15 days' wages and exgratia payment at the rate of 11 days wages, for every completed year of service. The agreement also provides for payment of 18 days' wages for each remaining year of service upto the dates of the respective retirements of all employees. Out of 278 employees of respondent No.1, 228 signed the settlement agreement in addition to the recognized union. These employees have been duly paid all benefits in accordance with the settlement agreement including closure compensation, gratuity and exgratia payment. Thereafter, 26 more employees of respondent No.1, including petitioner Nos. 3 and 4 herein, made a joint request on 13th May, 2014 for payment of compensation in accordance with the award incorporating the settlement agreement. Relying on this representation, all these employees were paid compensation and gratuity in installments by postdated cheques. These amounts have been duly received by the employees including petitioner Nos. 3 and 4 herein. (As far as petitioner Nos. 1 and 2 are concerned, they had already ceased to be in the employment of the company, respectively, from 31st January, 2008 and 5th January, 2008). After the undertaking was permanently and irrevocably closed with effect from 27th June, 2014 in accordance with the award, the Board of Directors of the respondent company passed a resolution on 27th August, 2014, authorizing the sale of the entire plant and machinery of the undertaking of respondent No.1 at Akola. The sale of machinery started from 31st August, 2014 and the last lot of machinery was sold on 2nd March, 2015. It is submitted by respondent No.1 that except one transformer and some machinery which was already scrapped, all other machineries have been sold and delivered to the respective buyers. Only thereafter the present petition has been filed before the Court. (It was filed on 7th January, 2015).

6. The Industrial Court, whilst passing the impugned award, noted that the reference was made to it after the appropriate government had granted permission of closure under Section 25O of the Act and on an application of the recognized union under subsection (5) thereof. The Court took into account the various reasons for closure indicated by respondent No.1 and the evidence led by it in support of its claim for closure. The Court also considered the submission of the recognized union that the matter was principally settled between respondent

No.1 and itself and, accordingly, it was not pressing its application under subsection(5) of Section 250 of the Act. The recognized union, in other words, had no objection to effect being given to the permission granted by the Commissioner of Labour under Section 250 in September, 2008. As far as the other union, namely, respondent No.3 is concerned, the Court noted that admittedly this union had its address in Mumbai; it had never claimed to be the recognized union for the undertaking of respondent No.1 at Shivni in Akola; it had not examined any of its officials or members / employees working at the undertaking at Shivni, Akola; and its reply indicated that it had the support of only about 16 members/ employees as against 228 workmen who had accepted the terms and conditions of the settlement. On these facts and considering the material placed before it, the Court came to the conclusion that the settlement arrived at between respondent Nos. 1 and 2, which had the overwhelming support of about 228 out of 278 workmen of respondent No.1, was in the interest of the workmen and by far, the objection raised by the rival union had no merits. The Industrial Court, in the premises, answered the reference in accordance with the terms of settlement forming part of the application of the recognized union dated 7th April, 2014. (This application was stated to be a part of the award.)

7. No doubt, our Court in the case of N.R.C. Employees Union (supra) has held that the provisions of Section 250 of the Act are mandatory and cannot be overridden by any settlement to the contrary. The Court relied on the judgment in the case of Oswal Agro (supra), where the Supreme Court had laid down this proposition, holding that no settlement to the contrary would be binding on the workmen. The law laid down by the Supreme Court in Oswal Agro (supra) is on the footing that any settlement within the meaning of Section 2(p) read with Section 18(3) of the Act would undisputedly bind the workmen, but the question to be considered in the case of a closure is whether the provisions of Section 250 of the Act have nevertheless been complied with. The Court observed that a settlement could be arrived at between the employer and his workmen in the case of an industrial dispute; Such industrial dispute might even arise as regards the validity of the closure. A settlement, however, as regards the closure can be arrived at provided such closure has been effected in accordance with law. The requirements of issuance of a notice in terms of Section 250 and a decision thereon by the appropriate government were suggestive of the fact that the law in this behalf has laid down a public policy. The State Government, before granting or refusing such permission, was required to comply with the principles of natural justice by giving an opportunity of hearing both to the employer and the workmen and thereafter pass an order assigning reasons, having regard to the several factors bearing on the subject, one of the important factors being the interest of the workmen. These provisions, being imperative in character, would prevail over the right of the parties to arrive at a settlement. Such settlement must nevertheless conform to the statutory conditions laying down a public policy. The dicta of the Supreme Court in Oswal Agro (supra) are based on a

wellknown principle of public law, namely, that whenever the law makes a provision to protect the public interest, the parties cannot contract out of such provision by a private treaty.

8. Let us now examine the facts of the present case in the light of this law. In the present case, the notice of closure was duly issued and when the State Government was duly approached with an application for permission of closure. On this application, the State Government did grant opportunity of hearing to all the stakeholders. The order of the State Government granting permission of closure was passed with reasons assigned in support thereof and having regard to the various factors bearing on the subject. It was this permission which was challenged before the Industrial Court in the reference. The recognized union, which was one of the main protagonists of this challenge, entered into a settlement with the respondent company during the pendency of this reference, and withdrew its challenge to the settlement. The very fact that the recognized union, with the support of an overwhelming majority of workmen of respondent No.1, accepted the terms of settlement indicates at least prima facie that the settlement was indeed in the interest of workmen. Nothing is shown to the contrary by the opponents of the settlement.

9. Learned counsel for the petitioners tried to make out certain personal grievances on the part of individual workmen, claiming that they were prejudiced by this bargain. The propriety of the settlement has to be viewed from a holistic standpoint, keeping the overall interest of workmen in mind and cannot be vitiated by individual grievances of a minuscule minority of the workman. Nothing is pointed out to the Court to show that this settlement was in a broad sense and from a holistic standpoint, opposed to the interest of the body of workmen or that any better settlement could have been arrived at in the facts and circumstances of the case. The closure, in other words, being shown prima facie in compliance with the provisions of Section 25O of the Act and the challenge laid by the recognized union not being pressed and there being no concrete material before the Court to show that the settlement was not in the interest of the general body of workmen, the Industrial Court really had no option but to accept the settlement and make an award in terms thereof. It nevertheless considered the material placed before it before coming to the conclusion that the settlement was indeed in the interest of the workmen.

10. In *Shivanand Gaurishankar Baswanti vs. Laxmi Vishnu Textile Mills*, reported in (2008) 13 SCC 323, the Supreme Court considered the status and position of the representative union, particularly in the context of the Bombay Industrial Relations Act, 1946. The Court held that the decision taken by such representative union was final and binding. The Court particularly considered the question as to whether acceptance of this status and position on the part of the representative union leads to a case of tyranny of the representative union. The Court held that the intention of the legislature was clear and unambiguous, and it was the representative union, who alone could protect the interest of the

workmen. Though we are here concerned with a settlement within the meaning of the Industrial Disputes Act and its efficacy in a reference challenging the permission of the appropriate government under Section 25O, the broad considerations regarding weightage to be assigned to the settlement signed by a representative union cannot be lost sight of. Besides, as noted above, the settlement arrived at by the union has an overwhelming support, it having, in fact, been signed specially by 228 out of 278 workmen of respondent No.1. Even out of the workmen who did not sign the settlement, nearly 26 of them finally accepted payment of closure compensation in terms of the award.

11. In the premises, there is no merit in the challenge to the award. The writ petition is, accordingly, dismissed. No order as to costs.