

(2007) 05 DEL CK 0034

In the Delhi High Court

Case No : Writ Petition (C) No's. 12617-50 of 2006

Ram Phal Verma and Others

APPELLANT

Vs

Scooters India Ltd. and Others

RESPONDENT

Date of Decision : 23-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 18

Citation : (2007) 05 DEL CK 0034

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : S.L. Hans, for the Appellant; Jagat Arora and Rajat Arora, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The petitioners have preferred the present writ petition praying inter alias for quashing the award dated 17th March, 2005 passed by the Presiding Officer, Industrial Tribunal (hereinafter referred to as 'the industrial adjudicator') in ID No. 129/97.

2. Briefly narrated, the facts of the case are that the respondent No. 1, Scooters India Ltd., a Government of India undertaking (hereinafter referred to as 'the respondent company'), floated a Voluntary Retirement Scheme (for short 'VRS') on 24th December, 1993 applicable to the workers who had rendered services for at least 10 years. In response to the VRS, out of a strength of around 1600 workers, about 1000 workers opted for VRS. It may be noted that the VRS had to be floated by the respondent company in view of the fact that it suffered huge financial losses and was declared a sick company under the Sick Industrial Companies (Special Provisions) Act, 1985 and referred to the Board for Industrial and Financial Reconstruction (BIFR).

3. Pursuant to the aforementioned VRS having been floated by the respondent company so as to close down its Fan unit in Delhi on the ground of sickness of

the unit, the petitioners accepted the VRS in January, 1994. One of the terms and conditions of the VRS is as below:

8. If there is any increase in manpower in the company, as far as possible, preference in recruitment would be given to the employees who have accepted VRS.

4. The applications of the petitioners for availing of VRS was accepted by the respondent company and they were paid all their dues in terms thereof.

5. It is the case of the petitioners that despite the aforementioned clause governing the parties, the respondent company made new recruitments without considering the petitioners for appointment, and as such they were entitled to be reinstated in service from the date on which the respondent company recruited new persons. Initially, the matter was referred to conciliation. However, on failure of the conciliation proceedings, the appropriate Government made the following reference to the Industrial Tribunal:

Whether the workmen whose names appear in Annexure 'A' are entitled to re-employment in terms of Clause "8" of the Voluntary Retirement Scheme dated 24.12.1993, of the management and if so, what directions are necessary in this respect?

6. As against the claim of the petitioners that the respondent company had made new recruitments without considering the petitioners in terms of Clause 8 of VRS, the respondent company took a specific stand before the Industrial Tribunal that no such recruitments were made by it.

7. On the basis of the pleadings of the parties, following issues were framed by the industrial adjudicator:

(1) As per terms of reference.

(2) Whether the claimants are not the workmen as alleged in para 1 of the preliminary objections of Written Statement? (OPM)

(3) Whether the workmen union has the locus standi to file the claim? (OPM)

(4) Whether has been a proper espousal? (OPM)

8. While the petitioners examined 25 witnesses, mainly the claimant/workmen, including one Sh.Surender Kumar, a Labour Inspector posted in West District, Karampura, the respondent company on its part examined two witnesses. After examining the evidence of both the parties and the material placed on the record, the industrial adjudicator taking into consideration the fact that the petitioners had applied for and accepted all the benefits under the VRS (Ex.MW-1/3) which was formulated on the guidelines of the Ministry of Industry, Government of India and was made applicable to the employees of public enterprises in the public sector, coupled with the deposition of the two witnesses, i.e. MW-1 and MW-2 produced on behalf of the respondent company, who stated

that no fresh recruitments were made by the respondent company in the category of the petitioners, held that there was no violation of Clause 8 of the VRS on the part of the respondent company. It was further held that no evidence was adduced on behalf of the petitioners to support their contention that the respondent company had employed any other workman after their accepting the VRS, in violation of Clause 8 of the VRS.

9. In the course of the proceedings before the industrial adjudicator, the respondent company also filed an affidavit stating inter alia that the respondent company had not made any fresh recruitment of workers/daily rated workers/casual employees after the closure of the Fan unit of the respondent company in Delhi. An undertaking was also given to the effect that in case any fresh recruitments were to be made by the respondent in any manufacturing activity of the respondent at New Delhi, then the petitioners shall be given preference in the order of their seniority. Taking note of the aforesaid affidavit (Ex.MX), the industrial adjudicator came to the conclusion that there was no violation of Clause 8 of the VRS under which the petitioners had accepted voluntary retirement and that the rights of the petitioners to be considered for fresh employment in terms of the Clause 8 thereof, was kept intact by the respondent company. Accordingly, the reference was answered against the petitioners and it was held that they were not entitled to any relief though they would be always be entitled to re-employment in terms of Clause 8 of the VRS as undertaken by the respondent company.

10. In the present proceedings, the grievance of the petitioners is that the industrial adjudicator while passing the award, overlooked the evidence of the Labour Inspector who it was alleged had inspected the factory premises of the respondent company on 16th October, 1995 and stated that certain workers were found working with the respondent company. Learned Counsel for the petitioners contended that there were manifest errors in the award inasmuch as in para 9 of the impugned award, while adverting to the deposition of the workmen's witness Sh.Surender Kumar, instead of reproducing the cross- examination of the said witness, excerpts from the statement of the respondent company's witness was extracted therein, which shows non-application of mind on the part of the industrial adjudicator. It was also contended that the observations made in the impugned award to the effect that except for examining the Labour Inspector, the petitioners had not adduced any other evidence is factually incorrect as 25 persons had appeared as witnesses on behalf of the petitioners.

11. The last limb of the arguments of the counsel for the petitioners was that the petitioners have been wrongfully deprived of the various payments from the year 1992 to the actual date of their voluntary retirement, in terms of a Memorandum of Settlement dated 29th November, 1997 arrived at between the respondent company and its workmen. In the course of arguments, challenge was specifically laid to Clause 2.2 of the Memorandum of Settlement which prescribes the scope and coverage of settlement and stipulates that the benefits under the

settlement shall be available only to the workmen on the rolls of the respondent company as on 1st November, 1996 and who continue to be on the rolls of the respondent company as on the date of agreement, thus excluding the petitioners who took VRS earlier to 1st November, 1996. In this regard, counsel for the petitioners drew the attention of This Court to the record of the proceedings dated 8th May, 2006 before one Mr.A.K.Garg, Counsellor, appointed by the Delhi Legal Services Committee wherein the petitioners were advised to raise the issues with regard to the validity of the Memorandum of Settlement dated 29th November, 1997 in the High Court, to state that relying on the said advise, the petitioners are seeking the aforesaid relief in the present writ petition.

12. Counsel for the petitioner placed reliance on the following judgments to contend that failure on the part of the industrial adjudicator to render appropriate findings in support of its order is liable to be rectified/corrected by the High Court under Article 226/227 of the Constitution of India:

- (i) Gopala Genu Wagale Vs. Nageshwardeo Patas Abhishekh Anusthan Trust,
- (ii) J.D. Jain Vs. Management of State Bank of India and another,
- (iii) Kishore Kumar Khaitan and Another Vs. Praveen Kumar Singh,

13. On the other hand, counsel for the respondents submitted that the impugned award is legal, valid and justified as the industrial adjudicator had rendered the same after appreciating the entire evidence and the document placed on the record. It was also submitted that the finding of facts arrived at after duly appreciating the evidence is not liable to be disturbed by the High Court in writ proceedings as it ought not to act as a court of appeal, nor is there any perversity or infirmity in the impugned award to deserve interference. In support of his contention, counsel for the respondents referred to the following judgments:

- (i) Sadhu Ram Vs. Delhi Transport Corporation,
- (ii) Calcutta Port Shramik Union v. Calcutta River Transport Association and Ors. 1989 SCC (L&S) 106.

14. Counsel for the respondents submitted that challenge to a particular clause of the Memorandum of Settlement dated 29th November, 1997 is not justified or permissible, particularly since the petitioners had admittedly left the respondent company before execution of the aforesaid Memorandum of Settlement. It was further contended that in any case, the said Memorandum of Settlement was not a part of the proceedings before the Industrial Tribunal and the same could not be questioned in the present petition, but only by raising a separate industrial dispute which has not been done by the petitioners.

15. Without prejudice to the aforesaid submissions, the counsel for the respondent canvassed that a settlement cannot be weighed in the golden scale and has to be seen as a whole. Reference was made to the judgment of the

Supreme Court in the case of I.T.C. Ltd. Workers Welfare Association and Another Vs. The Management of I.T.C. Ltd. and Others, as also of This Court in the case of Vijay Pal Singh v. Punjab National Bank [WP(C) No. 2751/2006] decided on 29th March, 2007. It was stated that in view of the fact that there were no averments in the writ petition that the Memorandum of Settlement was bad or contrary to the mandate in the Constitution, the petitioners could not be permitted to challenge the same while addressing arguments, particularly when the respondent company had no opportunity to rebut the averments of the petitioners. Furthermore, it was submitted that challenge to the Memorandum of Settlement was barred by sheer delay and laches, nine years having expired since the execution thereof. He also relied on an order dated 1st April, 1999 of the Allahabad High Court in WP No. 491 (SB)/99 entitled 'R.K.Verma v. UOI and Ors. ' whereby challenge to the Memorandum of Settlement made by certain other workmen who had taken voluntary retirement, was turned down and the writ petition was rejected.

16. I have heard the learned Counsels for the parties. I have perused the impugned award and have also examined the documents placed on the record.

17. Coming to the first plea raised on behalf of the petitioners that the industrial adjudicator had ignored evidence of the Labour Inspector as also his inspection report dated 16th October, 1995 which contained the list of workers reportedly working in the unit on the said date, a perusal of the impugned award makes it evident that it is not as if the industrial adjudicator overlooked the aforesaid document and evidence adduced on behalf of the petitioners, but in fact did not give credence to the same on the ground that the list forwarded by the Labour Inspector containing the names of 20 workers did not contain any material particulars, such as their parentage, their residential addresses or the date of their employment. Further, it was observed that none of the workers whose names found mention in the said list and who were purportedly retained by the respondent company subsequent to the voluntary retirement of the petitioners, were examined by the petitioners in support of their case. The findings given in the impugned award cannot be faulted as preponderance of probabilities does not preclude the industrial adjudicator from arriving at the conclusion that he did in the impugned award. As held in various judicial pronouncements, the High Court while exercising its power under Article 226 of the Constitution of India, is not expected to reappreciate the evidence adduced before the industrial adjudicator as if sitting in appeal and reject the findings of the Tribunal only for the reason that a conclusion different from that arrived at by the Tribunal, could have been arrived at in the facts and circumstances of the case. Reference in this regard may be made to the following judgments:

(i) Harbans Lal Vs. Jagmohan Saran,

(ii) B.C. Chaturvedi Vs. Union of India and others,

(iii) Indian Overseas Bank v. I.O.B. staff Canteen Workers" Union AIR 2000 SC

1508.

(iv) Municipal Corporation of Delhi Vs. Asha Ram and Another,

(v) Filmistan Exhibitors Ltd. Vs. N.C.T. and Others,

18. The other contention of the learned Counsel for the petitioners was that there were errors apparent on the face of the impugned award inasmuch as while referring to the deposition of the Labour Inspector, an excerpt of the deposition of the respondent company's witness was reproduced. It was also stated that similarly, it was wrongly recorded that the petitioners had not examined any other witness besides the Labour Inspector, whereas 25 persons had appeared in the witness box in support of their claim. However, the aforesaid errors cannot be held to be fatal to the conclusions arrived at in the impugned award. Fact remains that the industrial adjudicator had after taking into consideration the deposition of the witnesses of both sides, given a categorical finding that the petitioners were unable to establish their case that workmen were engaged by the respondent company in the Delhi unit after the petitioners were granted voluntary retirement, contrary to Clause 8 of the VRS. Merely because while extracting the cross-examination of the Labour Inspector, perhaps on account of some typographical error, the evidence of the respondent company's witness has been reproduced in para 9 of the impugned award, it cannot be held to be a ground for setting aside the same. Similarly, while in para 10 it is recorded that except for examining the Labour Inspector no other evidence was given by the workmen, para 8 of the said award clearly records that the petitioners had examined 25 witnesses, including the Labour Inspector. Thus no mileage can be taken from the said errors that may have inadvertently crept in the impugned award.

19. The following observations made by the Supreme Court in the case of Calcutta Port Shramik Union (supra) can be usefully referred to in this regard:

Para 10: The object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a government to an Industrial Tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases an attempt should be made by courts exercising powers of judicial review to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hypertechnical grounds. Unfortunately the orders of the Single Judge and of the Division Bench have resulted in such frustration and have made the award fruitless on an untenable basis.

20. The industrial adjudicator can also not be faulted for taking into consideration the affidavits filed on behalf of the respondent company, particularly an additional affidavit (Ex.MX) filed during the course of the proceedings, wherein it

was clearly stated by the respondent company that in case any fresh recruitments were to be made by the respondents in any manufacturing activity of the Delhi unit, then the petitioners shall be given preference in the order of their seniority.

21. In respect of the last contention raised by the learned Counsel for the petitioners in the course of arguments about the Memorandum of Settlement dated 29th November, 1997 executed between the respondent company and its workmen, it is relevant to note here that apart from filing a copy of the aforesaid proceedings dated 8th May, 2006 before the Counsellor appointed by the Delhi Legal Services Committee as also a copy of the Memorandum of Settlement dated 29th November, 1997, there is not a whisper in the writ petition laying a challenge to the said Memorandum of Settlement dated 29th November, 1997 as being iniquitous or unfair to the petitioners. No foundation whatsoever has been laid down in the writ petition for seeking entitlement to the benefits under the said Memorandum of Settlement, except for simply making a prayer in the prayer clause, claiming entitlement to the benefits flowing under the said Memorandum of Settlement.

22. Fact remains that the petitioners have not raised a separate industrial dispute for seeking redressal of any grievance that they had in respect of the aforesaid Memorandum of Settlement. It is also undisputed that the said Memorandum of Settlement was not a subject matter of the enquiry which resulted in the impugned award. The industrial adjudicator was forwarded specific terms of reference, of which the Memorandum of Settlement was not a subject, nor was the said document ever placed before the industrial adjudicator for consideration. Hence the petitioners cannot be permitted to assail the said Memorandum of Settlement for the first time in the manner as sought to be adopted in the present proceedings.

23. In any case, even if the contention of the learned Counsel for the petitioners that the court while sitting in writ proceedings is entitled to examine the said document and grant relief to the petitioners if they are so entitled in the present proceedings is accepted, though This Court expresses its reservations about the same, it is a settled law that This Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, ought not to interfere with or unsettle a settlement arrived at between the management and its workmen unless there are exceptional circumstances which reveal that the settlement was in any way unfair, unjust, motivated or a mala fide one.

24. It is trite that the object of entering into such settlements is to promote industrial peace and harmony and to attach to them such sanctity as is necessary to bind not only the workmen belonging to the union, but also all others, so as to put the same at par with the award of the Adjudicating Authority. The law enunciated by the Supreme Court on the issue also mandates the same course of action. As held in the case of Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Ltd., reiterated in the case of ITC Ltd.

Workers Welfare, Association (supra):

Para 15 - As the settlement entered into in the course of conciliation proceedings assumes crucial importance in the present case, it is necessary for us to recapitulate the fairly well settled legal position and principles concerning the binding effect of the settlement and the grounds on the which settlement is vulnerable to attack in an industrial adjudication. Analysing the relative scope of various clauses of Section 18, This Court in the case of Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Ltd., succinctly summarized the position thus:

Settlements are divided into two categories, namely, (i) those arrived at outside the conciliation proceedings (Section 18 (i) and (ii)) those arrived at in the course of conciliation proceedings (Section 18 (3)). A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement. But a settlement arrived at in the course of conciliation proceedings with a recognised majority union has extended application as it will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, Therefore, safely be made binding not only on the workmen belonging to the union signing the settlement but also on the others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicatory authority.

25. Furthermore, there is a substance in the plea raised on behalf of the respondents that challenge, if any, to the Memorandum of Settlement is highly belated, the petitioners having retired pursuant to the VRS offered in 1994, the Memorandum of Settlement having been arrived at in the year 1997 and the present writ petition having been preferred as late as in the year 2006. In the case of R.K.Verma (supra), the Allahabad High Court while dismissing the writ petition filed by certain workmen who had accepted the VRS, and then challenged the Memorandum of Settlement, held as under:

We have considered the case of the petitioner and the submissions made by him and we find that this petition suffers from laches, as the impugned notification was issued way back in the year 1997 and the petitioner has come to challenge the same by means of the present writ petition, and there is no Explanation for the delay but for that he was not informed by the Factory. There appears to be no reason for the factory to inform the petitioners, since the revised pay- scales were notified by the Government of India as well as the notification was published in this respect in the newspapers. More so, when the Company was of the considered opinion that no benefit is to accrue to the petitioner, there was no

reason for the Company to inform him. It was the duty of the petitioner to challenge, if at all, the said notification within a reasonable time from the date of its issuance. Admittedly, the petitioner left the service of the Company way back in 1994 under a scheme of voluntary retirement and obtained the benefits arising out of that scheme and any subsequent beneficial scheme for the employees of the Company which may have been formulated subsequently will be of no benefit to the petitioner, since he has already left the service of the Company and the contract of service was no more subsisting. No merit. Dismissed.

26. Thus there was occasion for the Memorandum of Settlement to be judicially scrutinized by the court in the writ petition preferred by certain other workmen who had taken the VRS. The aforesaid writ petition was filed in the year 1999 and even at that time, the Allahabad High Court arrived at a conclusion that the said writ petition suffered from delay and laches. In the present case, the delay is almost of 9 long years and the petitioners cannot be now permitted to conveniently jump over the said hurdle by introducing the said Memorandum of Settlement in the present proceedings, when in fact the impugned award based on a reference made only in respect of Clause 8 of the VRS has already been passed. Merely because the counsellor of the Delhi Legal Services Committee advised the petitioners to seek their remedy in the High Court does not mean that the petitioners can be permitted to assail the said Memorandum of Settlement in the present proceedings in the manner as sought to be done. The remedy of the petitioners, if any, lies elsewhere.

27. For the reasons stated hereinabove and in view of the position of law discussed, the court is not inclined to exercise the jurisdiction vested in it under Article 226 of the Constitution of India in the present case by interfering in the findings of fact recorded by the Tribunal in the impugned award or by holding that the petitioners are entitled to any relief under the Memorandum of Settlement dated 29th November, 1997. The writ petition Therefore fails and the same is dismissed. No order as to costs.