

(1953) 08 BOM CK 0011

In the Bombay High Court

Case No : Special Civil Application No. 933 of 1953

Ranchhod Ravji Mota

APPELLANT

Vs

State of Bombay and Others

RESPONDENT

Date of Decision : 10-08-1953

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 114, 114(1), 116(1), 30, 71
Constitution of India, 1950 — Article 226

Citation : AIR 1954 Bom 212 : (1953) 55 BOMLR 988 : (1954) ILR (Bom) 467 : (1954) 1 LLJ 455

Hon'ble Judges : Chagla, C.J.;Shah, J

Bench : Division Bench

Advocate : Rajani Patel, T.Godiwala and V.B. Patel, for the Appellant; M.P. Amin, General, H.K. Shah and S.P. Mehta, for the Respondent

Judgement

Chagla, C.J.—The petitioner is an employee of the weaving department of the night shift of the third respondent Mills. It appears that on March 21, 1950, a settlement was arrived at with the Mills with regard to the change-over of workers in the weaving department in the day shift and the night shift. On January 30, 1952, a notice was given by respondent No. 4 terminating this settlement. Respondent No. 4 Is the representative labour Union of respondent No. 3 Mills. On July 29, 1952, the Mills gave a notice of the termination of the settlement of the change-over and on July 30, 1952, a settlement was arrived at between respondent No. 3 and respondent No. 4 discontinuing the changeover of the workers of the day shift to the night shift, and this arrangement was registered under the provisions of the Bombay Industrial Relations Act, 1946.

It appears that the petitioner and all the other employees of the night shift were not members of respondent No. 4 labour Union and they made a grievance to the Government that the settlement arrived at between respondent No. 4 and respondent No. 3 was not a fair settlement as far as the night shift workers were concerned. Thereupon the Government Issued a notification u/s 72 of the Industrial Relations Act referring to the Industrial Tribunal the dispute between

the employees of the weaving department of the day shift and the employees of the weaving department of the night shift.

When the matter came before the Industrial Court, the Industrial Court realised the difficulty of respondent No. 4 representing all the workers of the Mills, and therefore it directed that an assessor should be appointed to represent the night shift workers. Government had referred not only this dispute concerning the third respondent Mills but of other Mills, and this order of the Tribunal was made with regard to all the Mills and the order was made on April 25, 1953.

An application for review was made before the Tribunal and the Tribunal came to the conclusion on June 5, 1953, that the order it had passed on April 25, 1953, did not apply to the Mills with regard to which registered settlements were in operation, and it took the view that in view of the registered settlement of July 30, 1952, it had no jurisdiction to arbitrate upon the dispute of the workers of the third respondent Mills. It is against this order that this petition is presented under Art. 226 of the Constitution, and the question that we have to consider is whether the fact that there is a registered settlement with regard to the dispute referred to the Tribunal by Government, debars the Tribunal from adjudicating upon that dispute.

2. Now, the jurisdiction of the Tribunal arises u/s 37 of the Act and that jurisdiction is set out in the following terms : "It shall be the duty of the Industrial Court" -- (and the relevant clause is clause (vi) -- "to decide Industrial disputes referred to it under sections 71, 72, 73 or 73A". It is not disputed that what is referred to the Industrial Court is an industrial dispute. It is also not disputed that it is referred to it by Government u/s 72. The view taken by the Industrial Court is that the fact that there is a registered agreement or settlement between the Mills and respondent No. 4 precludes the Tribunal from deciding the dispute and giving an award in respect of that dispute.

The position of a registered Union is dealt with in Section 30 of the Act, and that section provides that

"The following shall be entitled to appear or act in the order of preference specified as the representative of employees in an industry in any local area--",

and the first in the order of priority is a Representative Union for such industry. Respondent No. 4 is a Representative Union and u/s 30 undoubtedly it is entitled to appear or act on behalf of all the employees. But it must be borne in mind that Section 30 is procedural in character and it gives a power-of-attorney, as it were, to the Representative Union to appear and act on behalf of the employees. But the substantive section which deals with agreements and settlements and who are bound by the agreements and settlements is Section 114 which provides :

"(1) A registered agreement, or a settlement, submission or award shall be binding upon all persons who are parties thereto." There are two provisos to this section. The first deals with the employer and the second deals with a registered

union, and the second proviso provides :

"In the case of a registered union which is a party to such agreement, settlement, submission or award, all persons who were members of such union at the date of such agreement, settlement, submission or award or who become members of the union thereafter, shall be bound by such agreement, settlement, submission or award."

Therefore, it is clear that when a registered union is a party to an agreement or a settlement, it is only those persons who were members of such union at the date of the agreement or who become members of the union thereafter who are bound by such agreement or settlement, it is not disputed, as already pointed out, that the petitioner and those employed in the night shift were not members of the Representative Union at the date the settlement was arrived at, and therefore u/s 114(1) read with prov. (b) they are not bound by the agreement or settlement.

3. The Advocate General has attempted to argue that notwithstanding the clear language used by the Legislature, not only those who were members of the Union at the date of the agreement or settlement, but even those who were not members were bound by the settlement, and the argument is that because u/s 30 a Representative Union can enter into a settlement on behalf of all employees, all employees are bound by the same. In our opinion the contention of the Advocate Central is entirely untenable.

As already pointed out, Section 30 is purely procedural. It gives the right to the Representative Union to enter into a settlement. But the mere fact that the Union is given the right to enter into a settlement does not mean that by its act it binds even those who were not members of the Union, and Section 114 makes it perfectly clear that only two classes of persons are bound when a Representative Union enters into a settlement, (1) those who were members of the union at the date of the settlement, and (2) those who become members of the union thereafter. Therefore, the agreement or settlement does not in any way affect those persons who were not members of the union, nor would it affect those persons who may become employees subsequently and yet may not become members of the union. If the Advocate General's contention were correct, it would lead to this extraordinary result that an employee who was not a member of the Union would be bound by a settlement and if that settlement was not for any specified period the settlement would continue in perpetuity without that employee having any right whatsoever to have his grievances redressed because u/s 116(1) once a registered agreement or settlement has been arrived at, it ceases to have effect on the date specified therein, and if no date is specified therein, on the expiry of the period of two months from the date on which notice in writing to terminate such agreement, settlement or award, as the case may be, is given in the prescribed manner by any of the parties thereto to the other party. Therefore, it is only the Mills or the Representative Union that could give a notice terminating this agreement because no date is specified in this agreement.

4. In our opinion, it is precisely in order to deal with situations like this that Section 72 was enacted. We have a case here where a Representative Union has entered into a settlement with the employer. The settlement vitally affects workers who are not members of the Union. The workers feel a grievance and they are of the opinion that the settlement is not a fair settlement and not to their benefit. Therefore, they approach Government and because the agreement is not binding upon these employees that Government refers the dispute to the Industrial Tribunal, to adjudicate upon this dispute.

The law could never have contemplated that employees who are not members of a union should be bound by a settlement in the bringing about of which they had no voice and their grievances with regard to that settlement could not be heard or adjudicated upon by the proper Tribunal set up under the Act.

The Advocate General says that our decision may lead to a serious practical difficulty. He says that the employer would be bound by the agreement u/s 114 and the award of the Tribunal may be different from the settlement arrived at. We express no opinion upon the merits of the matter. It would be for the Tribunal to consider the dispute, to consider the settlement arrived at between the employer and the Representative Union, and to consider whether that settlement was a fair and proper settlement in the interest of the employees. We are only concerned on this petition with deciding that it is obligatory upon the Tribunal to adjudicate upon this reference which has been made by Government u/s 72. How they should adjudicate upon it and how they should deal with it on merits is a matter entirely for the Tribunal.

5. The result is that the petition must succeed and there will be an order in terms of prayers 1 and 2 of the petition.

6. Respondent No. 3 must pay the costs of the petitioner. No order as to costs of respondent No. 4. Costs of the petition quantified at Rs. 150.

7. Petition allowed.