

(1965) 06 AP CK 0002
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 133 of 1964

S. Joseph and Others

APPELLANT

Vs

Panyam Cements and Mineral Industries Ltd., Kurnool and
Others

RESPONDENT

Date of Decision : 21-06-1965

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1), 12(3), 18, 18(1), 19(2)

Citation : AIR 1966 AP 147 : (1967) 1 LLJ 10

Hon'ble Judges : P. Satyanarayana Raju, C.J;Kumarayya, J

Bench : Division Bench

Advocate : K. Jayachandra Reddy and D. Reddappa Reddi, for the Appellant; P. Ramachandra Reddy, Government Pleader and K. Srinivasamurthi, for the Respondent

Final Decision : Partly Allowed

Judgement

Kumarayya, J.—This appeal is directed against the order of Gopalakrishnan Nair J. granting a writ of prohibition restraining the Labour Court Guntur from taking proceedings for adjudication of the industrial dispute in pursuance of a reference u/s 10(1)(c) of the Industrial Disputes Act (hereinafter referred to as the Act) made by the Government under Notification dated 16th July, 1962.

2. The facts leading to this proceeding may be shortly stated. The petitioner, Panyam Cements and Mineral Industries Ltd., Kurnool, is a public limited cement factory and hence a public utility service under the first schedule to the Act. On 17-4-1962 a worker employed as a driller in the said factory manhandled the Mines Manager. As a result the management suspended the said worker.

3. The reaction to this was immediate. 190 quarry workers at once struck work. They marched to the factory with a view to persuade the other factory workers also to join the strike. As they gave no notice of the strike to the management it was an illegal strike within the meaning of the Act. The Labour Officer Kurnool,

who is also the Conciliation Officer of the district, went to the factory to patch up reconciliation between the management and the workers. His efforts, however, proved fruitful. Erelong a settlement in this behalf was arrived at, a memorandum of settlement was drawn up and was signed by the management, the representatives of the workers and also by the Labour Officer. Consequent on this settlement all the workers except 16 of them were allowed to rejoin their duty. The case of these 16 workers was to be further examined. It was settled that it shall be referred for decision to the Labour Commissioner. That reference related to further points (in dispute) also which were to be determined; such as the wages of quarry workers and fixation of their workloads etc., with which we are not concerned. The Commissioner of Labour, after due enquiry, gave his decision within time on 6-6-1962. According to this decision, 10 out of the 16 workers had to be retained in the employment of the petitioner and 6, however, were to be discharged, though not without some monetary relief. The management had to make some ex-gratia payment to these six workers. This decision was accepted by the management. It was also accepted by five out of the six workers who, it is said, in fact received the ex-gratia payment. Only one person, i.e., appellant No. 4 refused to receive any such payment. But the Union of the Cement Factory claiming nevertheless that there was an industrial dispute by reason of removal of the 6 workers approached the Government to make a reference to the Labour Court, Guntur u/s 10(1)(c) of the Act. The Government accordingly referred the following matter for adjudication:--

"Whether the removal of the 6 workers by the management is justified? "

The management thereupon moved this Court alleging that the Government had no jurisdiction to make the reference in view of the valid and binding settlement arrived at between the parties and that a writ of prohibition therefore, should issue to the Labour Court, The Petition was resisted by both the Government and the Labour Union. On behalf of the Government, the Asst. Secretary in the Home Department filed an affidavit and on behalf of the workers, 4th respondent submitted his affidavit. That there was settlement between the management and the workers and that they subscribed their signatures through their representatives on the memorandum of settlement is not in dispute. What is alleged is that the settlement as arrived at does not come within any of the sections of the Act whether it be Section 12(3) or Section 18(1) or Section 10A(2) and further the memorandum was not drawn up in the prescribed form; and it is therefore invalid in law. The Government, in these circumstances had jurisdiction to make the reference in question.

4. Our Seamed brother Gopalakrishnan Nair. J., on a consideration of the terms of the memorandum and after review of the relevant provisions of law, came to the conclusion that it was a settlement in the course of conciliation proceedings which were initiated by the Labour Officer who was the Conciliation Officer for the district; that the memorandum of settlement as drawn conforms in substance to the prescribed form (H) though there may be some defects in completion of

that form especially the way in which the Labour Officer made his signature therein. He was definitely of the view that the settlement properly fell within Section 12(3) of the Act. In that premises he held that during the period the settlement was in operation under the provisions of the Act, the Government could not make any reference u/s 10(1)(c) of the Act. In this view he allowed the petition and issued a writ of prohibition.

5. Aggrieved by this order, all the 6 workers represented by the Secretary of the Union have come up in appeal,

6. The contention of the learned counsel Sri Jayachandra Reddy is that unless it is established beyond shadow of doubt that the settlement relied on is a settlement reached in the course of conciliation proceedings, the power of the Government to make reference cannot be open to doubt or question as obviously enough at least one of the appellants was not a member of the Union at the time of settlement. The learned counsel further contends that the memorandum of settlement having regard to its tenor, purport, the circumstances, attendant on its execution and the manner in which it is executed does not establish that it was a settlement arrived at in the course of conciliation proceedings. Indeed, his case is that it is a settlement which does not properly fall under any of the relevant provisions of the Act.

7. The position now is this; There is no dispute as to the factum of settlement. There is also no dispute as to the signatures on the memorandum of settlement; nor even to the fact that the case of 16 workers was referred to the Commissioner of Labour for decision as per the terms of settlement. It is also common ground that the decision was rendered on 6-6-1962 within one month's time as stipulated. Further, as per this decision, 10 workers were to be reinstated and only 6 were to be removed; but not without some monetary relief in the shape of ex-gratia payment. What is more significant is that not only the management abided by this decision but also 5 out of the 6 workers who were members of the Union when the settlement was arrived at offered to accept the same and received the payments made by the management in pursuance of the decision of the Labour Commissioner. Only Ramireddy, who was not a member of the Union at the time of settlement, declined to receive the sum of money and did not accept the decision. Such being the position the question is whether the said 5 workers, who were parties to the settlement, and accepted the terms thereof, offered to abide by the decision of the Labour Commissioner and accepted as well the ex-gratia payment in lieu of discharge of their service, can be permitted in law to go behind and raise dispute as to their removal.

8. "Settlement" as sought to be defined by Section 2 of the Act means a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and the workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by parties thereto in such manner as may be prescribed and a copy thereof has been sent to the appropriate Government and the conciliation officer.

Therefore, a settlement contemplated by the Act can either be a settlement arrived at in the course of conciliation proceedings or one arrived at between the employer and the workers even otherwise provided it complies with the prescribed formalities. Of course the legal effects of both the kinds of settlement are not identical in that whereas the latter binds under the clear provisions of Section 18(1) only the actual parties to the agreement, the former binds others also as specified in Sub-clause (3) of Section 18 even though such persons had joined the establishment subsequent to the settlement. The settlement in either case however will be binding for a period of six months from the date on which the memorandum of settlement has been signed by the parties to the dispute and shall continue to be binding as aforesaid until the expiry of two months from the date on which a notice in writing intimating an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement. That is what is provided in Section 19(2) of the Act. So then it is clear that even assuming that it was not a settlement arrived at during the course of conciliation proceedings, it (the settlement) indeed binds 5 of the appellants who were the parties to the agreement being duly represented by the Secretary of the Union and there can be no question of an industrial dispute being raised on their behalf during the period when the settlement is in force under the provisions of the Act. Apart from this rule which the Act provides there is also a well recognised doctrine of estoppel by conduct which precludes the party from changing its original stand. The doctrine, of course involves combination of several essential elements, namely, statement to be acted upon, action on the faith of it resulting in detriment to the actor. It is common ground that the workers went on strike without giving notice u/s 22 of the Act. It was indeed an illegal strike which had exposed the workers to criminal prosecution. At that juncture efforts were made by the Labour Officer who is a Conciliation Officer and also by the Special Officer, Evaluation and Implementation Officer to bring the management and the workers together. Both of them made a sincere attempt to compose their differences and to find out a panacea for the timely evil and arrived at a settlement. All workers except 16 workers were agreed to be reinstated. The case of 16 workers was agreed to be referred to the decision of the Labour Commissioner. Accordingly the reference was made, matter was inquired into and decision reached. The decision has been implemented so far as these 5 workers were concerned. This was possible only by reason of the reciprocal acts of the parties. All these operations meant an expenditure of good deal of money. Having thus made the management act and part with its money and having accepted the terms of settlement, the decision in consequence thereof and the ex-gratia payment in lieu of their removal, can it be open to them to raise dispute with regard to removal in the absence of any vitiating circumstances such as fraud, duress, victimisation etc? Certainly, a person who has made another party act in faith of his representation cannot be permitted to assume inconsistent position. He cannot be permitted to play loose and fast, blow hot and cold. When they have abided by the decision of their removal by accepting the payment they are estopped from raising dispute in relation thereto.

The Government could not be legitimately called upon to take cognisance of any such dispute and refer the same for adjudication on the assumption that the memorandum of settlement was far from being perfect in its form, executed though as it is on a form purporting to be in accordance with the prescribed form H having full regard to its headings, and is duly subscribed by the representatives of the parties bearing also the signatures of the Labour Officer who is a Conciliation Officer which must mean that he had full notice of the same. The absence of formal proof of sending a copy of which in the circumstance is but an empty formality cannot render this memorandum unworthy of notice. Such a memorandum is indeed pregnant with all legal consequences set out in Section 19 of the Act. It must be noted that the object of settlement could be other than adjustment of outstanding disputes between them. When the disputes have been adjusted to their satisfaction in a particular manner and the settlement reached has been acted upon, there could survive no industrial dispute that may be the subject-matter of reference by the Government during the period of statutory operation of such settlement. We therefore, feel that judged from any angle the writ of prohibition was rightly issued so far as these five workers are concerned.

9. The case of Rami Reddy (4th respondent), of course, stands on a different footing for he was not a member of the Union when the settlement was reached and he has not accepted the decision of the Labour Commissioner. In fact he has declined to abide by the same by refusing to accept the ex-gratia payment. So then if vicarious liability is sought to be attached to him that can be done only if it is an inevitable consequence of any provision of the statute. Under the statute the settlement would of course bind him if that is reached during the course of conciliation proceedings. As regards the nature of the settlement whether It was effected during the course of conciliation proceedings or not there is a good deal of controversy between the parties. This controversy cannot satisfactorily be resolved without going through the entire record relevant thereto. Unfortunately the Government have not sought to bring the entire material on record. No doubt our learned brother, on the basis of the memorandum of settlement itself and on consideration of the relevant provision of law reached the conclusion that if is a settlement which properly falls u/s 12(3) of the Act and hence binds this appellant as well. We feel that the material on record is "too scanty to enable us to come to that definite conclusion. We are of the view that the memorandum of settlement as it is by itself cannot conclusively determine this point. There are certain deficiencies found therein which raise questions of controversial nature. It is urged that notice of strike was not given u/s 22 of the Act so that the Labour Officer may necessarily resort to the conciliation proceedings, that the Labour Officer did not give either any formal intimation in writing to the parties declaring his intention to commence conciliation proceedings so that it may be readily presumed that the settlement was in conciliation proceedings and that further the Labour Officer himself did not make his signature as the Conciliation Officer but had signed the memorandum only as a witness. It is argued that if the

settlement was in the course of conciliation proceeding, his signature ought to have been there on the memorandum not as a witness but as a conciliation officer; but there is not even remotest reference to this capacity of his. It is further urged that though the memorandum of settlement to a large extent conforms to form H so far as headings are concerned, there are certain omissions as a result whereof we cannot come to the necessary or the only conclusion that it was settlement in the course of conciliation proceeding. It is also pointed out that there is nothing to show that the conciliation officer has sent a report to the appropriate Government together with the memorandum of settlement signed by the parties as provided u/s 12(3), that the register of settlements as prescribed in form (o) has not been produced to show the nature of the settlement. These and several other objections are raised to cast a cloud of doubt on the theory that it was a settlement in the course of conciliation proceedings. These controversial points as already observed could have been definitely answered, one way or the other, only if the relevant documents were produced or caused to be produced by the Government or the parties concerned. Even the averments in the affidavits are not helpful in this behalf. In the absence of these records we are left largely in the realm of surmises. Therefore we are unable to express any opinion on this point, In this state of affairs we do not think that a writ of prohibition can justifiably issue. Prerogative Writ as it is, it has to issue only in clear cases of excess or abuse of jurisdiction or violation of rules of natural justice or contravention of the laws of the land or the like grounds. It is essential that the Justifying cause for its issuance must fully be made out before the inferior tribunal can be precluded from continuing the proceedings. In case an illegality is complained of, it should be patent and apparent on the face of the record. It should be self-evident and should not ordinarily require for its establishment a lengthy enquiry into questions of facts. Nor should it involve a long-drawn process of reasoning on points where there may conceivably be two opinions. Unless a clear case for a writ of prohibition is thus made out there can be no justification for prohibiting the tribunal from functioning in its normal course. We may also note that the question whether the settlement was arrived at in the course of conciliation proceedings and whether it is therefore binding on the 4th appellant can also be gone into by the Labour Court. It is a matter which is perfectly within its competence to consider and decide. We, therefore, allow this appeal so far as Rumireddy (4th appellant) is concerned and recall the writ of prohibition to that extent. In other respects the appeal fails and is dismissed. No order as to costs.