(1998) 08 AP CK 0016

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17556 of 1994

S.B.C.B. Ltd., Operators and Workers Union, Rajahmundry — APPELLANT

Vs

State of A.P. and others — RESPONDENT

Date of Decision : 04-08-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 23
Industrial Disputes Act, 1947 — Section 18(1), 18(3), 2, 2, 25

Citation : (1998) 5 ALD 454

Hon'ble Judges : J. Chelameswar, J

Bench : Single Bench

Advocate : Mr. Prathipati Venkateshwarlu, for the Appellant; Government Pleader for Social Welfare and Labour, Mr. Ch. Dhananjaya and Mr. G. Vidya Sagar, for the Respondent

Judgement

1. M/s. Smithkline Beecham Consumer Health Care Ltd., Dowlaishwaram, Industrial Estate, Rajahmundry, which is the 2nd respondent herein has a considerable work force approximately about 2,000 employees which includes/ permanent and casual workers. The 5th respondent-Union was the only trade union of the workmen in the 2nd respondent factory for a long period from 1977 to 1990, However, in the year 1991, another trade union was registered by name S.B.C.B. Ltd. Operators and workers Union, which Union is the petitioner in the instant Writ Petition.

2. The relative strengths of the petitioner and the 5th respondent Unions is not very clear from record as neither party has chosen to state exactly what was the respective strength/membership of each of the Unions. However, it appears from the record that both the Unions have substantial membership.

3. It appears that there was a settlement dated 1-11-1989 between the 5th respondent-Union and the 2nd respondent-management which expired on 30-12-1992. However, during die currency of the said settlement, both the

Unions appear to have presented charters of demands some time in the month of September, 1992 and on 1-10-1992, the 2nd respondent-management started negotiations with the 5th respondent-Union which was the recognised Union. After the negotiations commenced, there appears to have been some trouble in the factory which resulted in violence and criminal cases were booked against some of the employees. On 23-10-1993, the 2nd respondent declared Lock-out. In this background, the Government of Andhra Pradesh by G.O.Rt. No.2518, dated 22-10-1993 referred the dispute to the Industrial Tribunal, Visakhapatnam and by another G.O. issued on the same day i.e. G.O.Ms. No.2519 prohibited the lock-out. It appears, the management received die said G.O. on 17-12-1993 and on 18-12-1993 the lock-out was lifted.

4. Subsequently, a joint negotiating committee of both the Unions consisting of members of both the Unions was formed and some negotiations took place and the workers started attending to their respective duties from 1-1-1994.

5. On 8-7-1994, a settlement was reached between the management (2nd respondent) and the 5th respondent-Union. Pursuant to the said settlement, the Industrial Tribunal, Visakhapatnam passed the nil award in I.D. No.4of 1993 which was pending before it, pursuant to G.O.Rt. No.2518 whereunder the dispute was referred by the Government.

6. With reference to other terms of the settlement dated 8-7-1994, there is no dispute between the parties i.e. the management and the petitioner and 5th respondent-Unions. All of them agree that the terms of the settlement arc acceptable to all the three parties. The only point in dispute is that the petitioner-Union objects to the latter part of Clause-10 of the settlement whereimder each of die workmen is required to contribute Rs.3,000/-towards the fund of the 5th respondent-Union, which reads:

"Adhoc Payment:

The Management agrees to pay a one time adhoc amount of Rs. 13,500/- (Rupees thirteen thousand and five hundred only) to all the permanent workmen who were on the rolls of the Company as on 1st November 1992 and continue to be on the rolls as on 8-7-1994. This adhoc payment would not be considered as remuneration/ wages and would not be covered for ESI, Provident Fund, Bonus, etc., and for any other payment linked to wages.

HMM Ltd., (Horlicks) Workers Union has signed many settlements and has worked for many years for the benefit of the workmen. It is agreed therefore that out of the adhoc amount, each workman would contribute Rs.3,000.00 (Rupees three thousand only) towards the fund of the union. The net amount after deducting this contribution would be paid to the workmen. The contribution towards the union fund would be given by the Management by cheque to union after deductions have been made from the adhoc payment."

7. Questioning the 2nd part of Clause 10 of the agreement referred to above, the

present Writ Petition is fded. Though, originally the Writ Petition was filed questioning the nil award passed in ID No.4 of 1993, the petitioner filed W.P.M.P. No.28674 of 1994 seeking amendment of prayer in the Writ petition whereunder the petitioner sought to question only that part of Clause 10 of the agreement referred to above as unjust and as amounting to unfair labour practice. The said W.P.M.P., was ordered by this Court on 19-10-1995.

8. Learned Counsel for the petitioner Sri Prattipati Venkateswarlu submitted that the requirement of Clause 10 of the settlement which called upon the employees of the, 2nd respondent-management to pay a sum of Rs.3,000/- as contribution to the 5th respondent-Union irrespective of the fact whether the said employees are members of the 5th respondent-Union or not would amount to unfair labour practice.

9. The expression ''unfair labour practice'' is defined u/s 2(r)(a) of the Industrial Disputes Act, 1947 which reads as follows:

"Unfair Labour Practice means any of the practices specified in the V Schedule".

The V Schedule of the Industrial Disputes Act, 1947 (for short, ''the Act'') is in two parts which describe the various activities or practices which would amount to unfair labour practice. The first part of the Schedule deals with unfair labour practices on the part of the employers and the second part of the Schedule deals with the unfair labour practices on the part of the workmen. According to the learned Counsel for the petitioner, the disputed part of Clause 10 of the settlement falls within the mischief contemplated in item 2 and 9 of the first part of the V Schedule and, therefore, such a clause should be declared as illegal and void.

10. Learned Counsel for respondent Nos.2 and 5, on the other hand, argue that the petitioner-Union, having accepted all the benefits arising out of the settlement dated 8-7-1994, cannot dispute or challenge only that part of the agreement which creates a liability on the employees irrespective of the fact whether they are members of the majority Union (R5) or not.

11. Apart from the above-mentioned submissions, a specific objection was raised by respondent Nos.2 & 5 that the Writ Petition itself is not maintainable for the reason that the petitioner-Union is challenging a clause in the settlement reached between private parties i.e. respondent Nos.2 and 5 and a writ would not, normally, lie to decide the disputes falling exclusively in the domain of private law. To meet the said objection, learned Counsel for the petitioner relied upon two judgments, the first of which is Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, , at para 21 of the said judgment, their Lordships of the Supreme Court observed:

"The judicial control over the vast expanding major bodies effecting the rights of the people should not be put into water tight compartments. It should remain flexible to meet the requirements of the variable circumstances. Mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found. Technicalities should not come in the way of granting the relief under Article 226 of the Constitution of India".

12. The second judgment relied upon by the learned Counsel for the petitioner is Nellimarla Jute Mills Karmika Sangham Vs. State of A.P. and Others, . This is once again a case where a writ of mandamus was sought to a company to allow the workers to work in the company without insisting upon giving personal undertakings. The facts of the case are that: the Company declared a lock-out on 1-6-1992 and the Government of Andhra Pradesh in exercise of its statutory power prohibited the said lock out and directed the company to open the company. Subsequent to such declaration, the petitioner-trade union therein entered into an agreement with the management of the company and the management agreed to reopen the company with effect from 31-8-1992. The factory was accordingly opened and the workers started attending the factory. However, the management again declared a lock-out subsequently, which lockout was once again prohibited by the Government by another G.O. Instead of lifting the lock-out pursuant to the prohibition orders given by the Government, the management called upon each of its employees to give personal undertaking in a specified proforma. It is in this background, the petitioner-trade union approached this Court seeking mandamus to direct the employer to allow the workers into the factory without insisting on personal undertakings. On the issue of maintainability of the Writ Petition in the said background, this Court held that in view of the orders of prohibition of lock out by the Government, the company is bound to lift the lock-out and permit the workers to join the work and continuation of the lock-out after the issuance of the relevant G.O. is illegal and is an offence punishable under the Act. Therefore, the Court came to the conclusion that the employer owed a public duty to lift the illegal lock-out unconditionally and hence the Writ Petition is maintainable.

13. It is to be examined in the present case as to whether there any such infraction of a public duty by respondent Nos.2 and 5 in entering into a settlement specifically in the context of the latter part of Clause 10 of the settlement.

14. According to the learned Counsel for the petitioner, the disputed clause amounts to infraction of a statutory obligation on the part of the 2nd respondent as the disputed clause is directly in conflict with items 2 and 9 of V Schedule of the Act. Items 2 and 9 read as follows:

"2. To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say-

(a) an employer taking an active interest in organising a trade union of his workmen, and

(b) an employer showing partiality or granting favour to one of several trade unions attempting to organise his workmen or to its members, where such a trade union is not a recognised trade union.

9. To show favouritism or partiality to one set of workers regardless of merit."

15. An analysis of item 2 would disclose that the employer should either dominate, interfere with or contribute support, either financially or otherwise, to any trade union. This clause is further explained by the Legislature saying that the employer who takes active interest in organising a trade union would be guilty of such unfair labour practice and also an employer who shows partiality or grants favour to one of the several trade unions where such a trade union is not a recognised trade union. On the facts of this case, the employer has neither organised a trade union as there were already two trade unions in existence nor taken any active interest in the organisation of such trade unions. The employer did not even show any partiality or granted any favour in favour of an unrecognised trade union. On the other hand, if the disputed part of Clause 10 is to be construed as granting any favour, it granted a favour in favour of a recognised trade union. Therefore, in my view, entry 2 of the fifth schedule of the Act has no application to the facts of the case.

16. Coming to entry 9, the disputed part of Clause 10 of the settlement does, in fact, confer an advantage on the recognised trade union which consists of one set of workers of the employer. However, whether such an advantage could be called as showing any favouritism or partiality must be taken on the facts of the case.

17. The purpose for which a contribution of Rs.3000/- is sought from each of the employees of the 2nd respondent irrespective of the fact whether the said employee is a member of the 5th respondent-recognised trade union or not, is not spelt out from the terms of the settlement. However, even in the counter affidavit filed by the 2nd respondent, the purpose for which such a collection is sought to be made is not explained except contending that the employees should take the settlement as a whole and that they cannot accept the settlement in part and reject some part of it. The 2nd respondent has not really clarified as to what was the purpose sought to be achieved by conferring such an advantage on the 5th respondent-Union. On the other hand, in the counter filed on behalf of the 5th respondent, the respondent-Union submitted that the management was not agreeable for a settlement unless two office bearers and one worker of the company were thrown out of service. Therefore, the 5th respondent-Union thought it fit in the larger interests of the workmen to persuade the said employees to resign from service with an understanding that they would be sufficiently compensated by the Union for their sacrifice. The pleading in this regard is as follows:

"In this regard it is also submitted that the Management was not prepared for the above settlement, unless two office bearers and one worker were terminated from service. Unless this condition was fulfilled, the Management was not agreeable for settlement. There are 530 permanent workers employed in the industry, apart from Badlies and other indirect members whose number would be about 800. Keeping in view the larger interest of the workers, the Union could persuade two of its office bearers and one worker viz., Sri M. Vishwanatham, General Secretary, Sri S. Parishodhan Rao, Secretary of the Union to resign from service, with a clear understanding that they would be sufficiently compensated by the Union for their sacrifice. Therefore, in pursuance of the understanding, an agreement was entered between the Union and the Management on 8-7-1994 to the effect that the aforesaid three workmen have resigned from service and they were relieved.

18. It can also be seen from the above pleading that what exactly was the amount of compensation agreed to be paid or subsequently paid in fact to the above employees who resigned from service pursuant to the understanding is not mentioned and the Counsel is silent in this regard. Admittedly, the contribution of Rs.3 000/- by each employee to the 5th respondent-Union would be a huge amount. As, even according to the admission of the 5th respondent, there are 530 permanent workers and 800 Badili or other category of workers irrespective of their affiliations to different trade unions. In the absence of any definite material on record to show that exactly was the amount paid to the employees who resigned from service and in view of the huge amount sought to be paid to the 5th respondent-Union, the only inevitable conclusion according to me is that the employer showed favouritism to the 5th respondent-Union which consists of a set of workers. I, therefore, hold that the latter part of Clause 10 of the settlement dated 8-7-1994 does, in fact, constitute an infraction of entry 9 of the fifth schedule of the Act and, therefore, in my view is an unfair labour practice.

19. The next question which falls for consideration is whether the said infraction of fifth schedule to the Act would amount to breach of public duty.

20. In this context, the Full Bench of this Court in Sri Konaseema Co-operative Central Bank Ltd., v. N. Seetharama Raju, AIR 1990 AP 171, after considering extensively the scope of this Court in issuing the Writs of Mandamus, at para 45 held as follows:

"45. We are, therefore, of the opinion that paragraph 21 in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, cannot be understood as laying down a general proposition that a mandamus lies to enforce a non-statutory contract. Indeed, in paragraph 14 it was affirmed that, if the rights sought to be enforced arc purely of private character, no mandamus can issue. It was also observed that where there is no public duty imposed upon a body, a mandamus would not lie. The statement in paragraph 21 must, therefore, be read consistent with what is stated in paragraph 14, and if the judgment is read as a whole and consistent with the decisions specifically referred to, and affirmed therein, it only means that for a mandamus to issue, there must be a public duty. All that was stated was that such public duty need not necessarily be imposed by a statute; it can be imposed by common law, custom, or even a statutory contract. This aspect has already been dealt with by us in para() supra."

21. Further referring to the various provisions of the Industrial Disputes Act and Andhra Pradesh Shops and Establishments Act, in the context of the termination of the employees, the Full Bench further observed at para 50 as follows:

"It would be evident that these statutory restrictions arc placed upon the employer''s power of termination not only in the interest of employees, but also in public interest. It follows, therefore, that where the mandatory requirements of Section 47 are not complied with, this Court may, in appropriate cases, interfere by way of a writ petition, and quash the termination. In several cases, the Supreme Court and this Court have quashed termination where it was effected in violation of Section 25-F of the Industrial Disputes Act. Section 47(1) also provides certain similar restrictions, and the law would be the same in this behalf as well. This does not mean that in every case where Section 47 is violated, this Court would automatically interfere. It must be remembered that the Act provides for remedies in case of violation . of the said provisions. Ordinarily, the parties ought to pursue the remedies provided by the Act and the Rules; but, in appropriate cases this Court can also interfere, notwithstanding tliat the employee has not chosen to avail of the remedies provided by the statute. In which cases, and in what circumstances would this Court interfere should be left to its judgment and discretion, to be exercised having regard to the facts of a given case.''''

22. In tile background of such declaration of law, the infraction of V Schedule to the Industrial Disputes Act would, in my opinion, constitute a breach of public duty imposed on the employer (2nd respondent) as the provisions of any Court (sic Act) are made in furtherance of publie policy and the breach of the provisions of any law, u/s 23 of the Contracts Act renders the agreement bond (sic void) and therefore as held by the Full Bench in appropriate cases, this Court would exercise its jurisdiction to remedy the wrong.

23. The next submission made by the learned Counsel for the respondents is that the settlement having benefited the entire work force of the industry, a Section of the work force may not be permitted to raise an objection to one of the clauses of the settlement as the rest of the settlement was accepted even by those workmen.

24. Factually, this statement is not supported by the pleadings or material on record. Even according to the counter-affidavit filed on behalf of the fifth respondent-Union at para 7, it is stated that:

"In feet, the benefits have already been released to all the workmen except about 80 persons who were not inclined to get the benefit."

Even assuming for the sake of argument that the benefit conferred by the agreement is accepted by all the workmen, would it debar by workmen who are not the members of the fifth respondent recognised Union from questioning that part of the settlement which called upon them to pay an amount of Rs.3,000/- to the fifth respondent-Union?

25. The learned Counsel for the respondents relying on Herbertsons Ltd., v. Workmen, AIR 1977 SC 322, submitted that it is not open either for the petitioners to accept the settlement in part nor is it permissible for this Court to examine the settlement in bits and pieces and the settlement has to be considered as a whole.

26. It is an admitted case of all the parties that the settlement in question is one which is reached otherwise than in the course of conciliation proceedings, the effect of such settlement is dealt u/s 18 of the Industrial Disputes Act, Section 18(1) stipulates that a settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Sub-section (2) deals with the arbitration awards and it is stipulated that such an award is binding on the parties to the agreement who referred the dispute to arbitration. Sub-section (3) insofar as it is relevant for our purpose stipulates tliat a settlement arrived at in the conciliation proceedings under this Act shall be binding on all the parties to the industrial dispute and all other parties summoned to appear in the proceedings. It is the admitted case of all the parties herein that the petitioner-Union was not a party to the settlement nor was it a party to the industrial dispute pending at tliat point of time and the settlement is not arrived at in the course of conciliation proceedings. In these circumstances, on a plain reading of Section 18 the settlement in question docs not bind on persons who arc not parties to the same.

27. However, the learned Counsel for the respondents strenuously argued that in view of the judgment of the Supreme Court referred to above, the settlement must be held to bind even the petitioner. The facts in the said decision of the Supreme Court, are that there was a reference of an industrial dispute for adjudication of eight demands. The second respondent-Union therein participated in the adjudication process. An award was passed by the Tribunal. Questioning the correctness of the award, the employer preferred an appeal by way of SLP to the Supreme Court. During the pendency of the matter in the Supreme Court certain interim arrangements were made by the consent of the parties. However, during the pendency of the litigation in the Supreme Court, there was a change in the ground situation that all the workers of the Company who were members of the second respondent-Union till then resigned and joined in the third respondent-Union. Therefore, the third respondent-Union therein apply to the Court to substitute the said Union in the place of the second respondent-Union, which was contested by the second respondent. In the meanwhile, the employer filed an application to decide the appeal in view of the terms of the memorandum of settlement entered into between the third respondent therein and the employer during the pendency of the appeal before the Supreme Court. In these

circumstances, the Supreme Court called upon the Industrial Tribunal to consider and record a finding whether the settlement entered into during the pendency of the litigation was fair and just. The Tribunal in turn recorded a finding that the settlement in fact was not a fair, just and reasonable. Incidentally, a question was raised since the settlement was entered into between the employer and one of the Unions, whether the same is not binding on the workmen who are not the members of the said Union, which entered into the settlement. Dealing with this question, the Supreme Court at para 16 held as follows:

"16. The numerical strength of the members of the 2nd respondent, who are workers of the company, would also have an important bearing as to whether the settlement accepted by the majority of the workmen is to be considered as just and fair. In that view of the matter, we are unable to appreciate that the 2nd respondent did not choose it fit to produce evidence to show the actual number of the workers of the company having membership of the 2nd respondent. It is rather odd that not a single worker of the company claimed before the Tribunal to be a member of the 2nd respondent and to assert that the settlement was not fair and just. This is particularly so when all the workers of the company have accepted the settlement and also received the arrears and emoluments in accordance with the same.''"

28. In the said factual background, the Supreme Court came to the conclusion that: "when a recognised Union negotiates with an employer, the workers do not have came into picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of mala fides, fraud or even corruption or other inducements. Nothing of that kind has been suggested against the President of the 3rd respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration."

29. In my view, the Supreme Court has not laid down any absolute rule that contrary to the statutory scheme u/s 18 of the Industrial Disputes Act, whenever the recognised Union enters into a settlement with the Management, otherwise than in the course of the conciliation proceedings, such a settlement would bind on all the workers irrespective of the fact whether they are the members of the Union which negotiated the settlement or not. It was only in the peculiar background of the case, the Supreme Court came to the conclusion that the settlement was binding on all the parties.

30. However, in the background of the facts of the present case, where a substantial number of workers have not admittedly accepted even the benefits arising out of the settlement, it cannot be held that such a settlement binds all the workmen irrespective of the fact whether they are the members of the Union which negotiated the settlement.

31. The argument was advanced by the learned Counsel for the respondents that it is not open for the petitioner-Union to accept the benefits of the settlement, but reject the liability created under the settlement. As I have already noticed, factually, a substantial number of workmen have not accepted even the benefits of the settlement. Apart from that the liability created under the settlement on the face of it, having regard to the discussion earlier, is for the benefit of the recognised Union (fifth respondent) and does not appear to be for the benefit of the entire work force. In these circumstances, I do not see any force in the submission made by the learned Counsel for the respondents.

32. For all the above-mentioned reasons, I am of the opinion that clause 10 of the settlement dated 8-7-1994 insofar as it stipulates:

"It is agreed therefore that out of the adhoc amount, each workman would contribute Rs.3,000.00 (Rupees three thousand only) towards the fund of the Union. The net amount after deducting this contribution would be paid to the workmen. The contribution towards the Union fund would be given by the Management by cheque to union after deductions have been made from the adhoc payment.''"

does not bind the petitioner-Union and its members, as in my view, that the said clause would amount to an unfair labour practice as discussed above and the same is liable to be declared as such.

33. In the result, the writ petition is allowed as indicated above.