

(2001) 03 BOM CK 0096

In the Bombay High Court

Case No : O.O.C.J. W.P. No. 2250 of 1998

Tata Consulting Engineers and Associates" Staff Union

APPELLANT

Vs

Tata Sons Ltd. and Another

RESPONDENT

Date of Decision : 20-03-2001

Acts Referred:

Citation : (2001) 4 BomCR 565 : (2001) 90 FLR 1066 : (2002) 4 LLJ 899

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—The petitioner, a break away fraction of the parent All India Union - Tata Consultancy Employees Union has been since then, i.e., 1986, frantically trying to establish itself in the undertaking of the Respondent Company at Mumbai. Now it is the question of its survival itself as the benefits of the last settlement of 1999 between the parent Union(recognized under the 1984 - Settlement by the Respondent Company (and not under the MRTU & PULP Act, 1971), and the Company was accepted "under protest" by all the 23 members. Initially this membership was claimed to be 200 in the year 1986. The erosion in the membership is not very much in dispute. Split and disunity has been the curse to the Trade Union movement in this Country. For the reasons best known to the leaders of the Petitioner Union, with a small following amongst the categories of draughtsmen, clerks, peons etc. the Petitioner Union submitted a separate charter of demands dated April 12, 1985 to the Respondent Company and raised an industrial dispute which finally came to be referred for adjudication by an order of reference dated April 1, 1986 to the Industrial Tribunal, Maharashtra at Murabai.

2. Both the parties completed their pleadings and filed their respective documents. Both the parties also adduced their oral evidence before the Tribunal. I may mention here, as a matter of fact, that during the pendency of the adjudication there were three settlements between the parent union and the

Respondent Company in respect of general demands of the workmen such as basic wages, dearness allowance, leave etc. The first such settlement was a little earlier before the Order of reference, i.e., on February 14, 1986. Thereafter there were similar settlements exactly during the pendency of the reference before the Tribunal.

(a) Settlement dated February 2, 1989. The benefits under this settlement were extended by the Respondent Company on its own to the members of the Petitioner Union, who accepted the same without prejudice to their rights and contentions in the pending reference.

(b) Settlement dated March 8, 1992:- This time the Respondent Company did not extend the benefits of the said settlement to the workmen covered under the reference unless they signed an undertaking to accept the settlement as binding and not to raise any dispute. The Petitioner's members however did not agree to give such undertaking. They however, applied to the Tribunal to extend the benefits of the settlement by way of interim relief. The Industrial Tribunal accordingly by its Award Part-I dated April 9, 1992 extended the benefits of the said settlement to the workmen covered by the pending reference w.e.f. January 1, 1991.

(c) Settlement dated July 5, 1995. On its application for additional interim relief the Tribunal extended the benefits of this settlement to the workmen covered by the pending reference by Award No. II dated September 19, 1996 w.e.f. January 1, 1994.

(d) By the final award dated March 19, 1998 the Tribunal rejected the reference as not maintainable in view of the settlements and for the reasons that the Petitioner Union had accepted the benefits under all the above settlements.

To complete the chronology of the settlement:

(e) Settlement dated September 30, 1999 was entered between the parent Union and the Respondent Company after the Award. By this time the total number of workmen employed was reduced to 200. Out of whom the 23 members of the Petitioner Union accepted the benefits, as usual, "under protest". All others had accepted the settlement unconditionally.

Barring the members of the Petitioner Union at Mumbai all the workmen in all the categories all over India had accepted all the settlements. Admittedly the Petitioner Union claims to represent only the workmen in the category of draughtsman and clerks. The settlements covered all the categories of the workmen employed by the Respondent Company all over India, including the draughtsman and clerks.

3. Shri S.J. Deshmukh, the learned counsel for the Petitioner Union, has submitted that the Industrial Tribunal was not justified in holding that the settlements mentioned hereinabove were fair and proper and were binding also on the workmen covered under the reference. Shri Deshmukh has urged that the

Petitioner Union had submitted its own charter of demands much prior to the Order of reference, and therefore, the Tribunal should have considered their demands independently on merits regardless of the aforesaid settlements with the other Union. He further contended that the Tribunal committed a grave error of law in holding that the reference was not maintainable, in view of the settlements which covered all the workmen including the workmen claimed to be represented by the Petitioner Union and covering all the demands referred for adjudication. Shri Deshmukh has pointed out several demands referred for adjudication which required independent judicial consideration on the merits of the demands and not in comparison with and on the basis of the aforesaid settlements. To buttress his submission he has referred to the question of dearness allowance, it was submitted by him that under the settlements which were entered during the pendency of the reference there was no linkage of the payment of dearness allowance with the Consumer Price Index (CPI). All along the workmen were given some amount as dearness allowance while the demand of the Petitioner Union was the dearness allowance linked with the CPI. The learned counsel attacked the Award holding the reference not maintainable by submitting that the charter of demands was submitted by the Petitioner Union on April 12, 1985 much before the first settlement dated February 14, 1986. He has also pointed out that in spite of the said settlement the State Government had referred the dispute for adjudication by the order of reference dated April 1, 1986. Shri Deshmukh further contended that the Tribunal ought not to have placed reliance on the Arbitration Award dated December 20, 1978 of Shri K.N. Wani, Industrial Tribunal, Bombay in Reference (IT) No. 292 of 1975. The grievance of Shri Deshmukh is that there was no revision in the wages and the conditions of the service of the workmen through the adjudicating process after the Wani Award. The learned counsel further pointed out that even the settlement dated May 24, 1984 between the Respondent Company and the TC Employees Union, the parent Union, had expired by efflux of time on December 31, 1984 and it stood terminated by the notice given by the Petitioner Union on January 1, 1985. Shri Deshmukh therefore submitted that the collusive settlement with the parent Union did not revise effectively the service conditions of the workmen on the scientific basis following the well settled principles of industry-cum-region by comparing the service conditions in the comparable concerns and on the basis of the sound financial condition of the Respondent Company to pay and bear the financial burden arising from the demands and to share the profits with the workmen. Shri Deshmukh has also criticised the award by submitting that there was no proper classification and pay scales provided in the settlements and therefore the Petitioner's demands ought to have adjudicated by the Tribunal. Shri Deshmukh also pointed out that mere stagnation in the time scale of the employees and reward for the experience gathered by the employees was not taken into account. Shri Deshmukh further contended that in view of steep rise in the cost of living all over the country it would be just to link the dearness allowance with the CPI. Shri Deshmukh relied on the very fact that such linkage was agreed in the year 1999 but according to

him it was too late and that it should have been with retrospective effect from the date of reference. The learned counsel further pointed out that there was no proper promotion and permanency policy and even the demand for HRA and other allowance ought to have been considered by the Tribunal. Shri Deshmukh has condemned the impugned Award as perverse as it is not based on evidence and it has not considered and appreciated the material placed on record by the Petitioner Union. He has therefore prayed that the Award should be set aside and the demands should be granted.

4. Shri Deshmukh has placed reliance on the following judgments.

Killick Nixon Limited Vs. Killick and Allied Companies Employees" Union, ; Tata Engineering and Locomotive Company Limited Vs. Their Workmen, .

According to the learned counsel the Tribunal ought to have adjudicated the demands following the principles laid down in the judgment in the case of Killick Nixon (supra). Shri Deshmukh has also distinguished the various judgments relied on by the Tribunal including the well known judgment of Herbertsons Ltd. The learned counsel tried to draw support from the judgment of the Tata Engineering, (supra) as there was somewhat similarity of the facts in the said judgment and in the present case. There was also a challenge to the settlement in the conciliation proceedings with the majority Union. Not to miss any point I think it is proper to reproduce the entire relevant portion from the judgment of the Tata Engineering which has also considered the ratio of Herbertsons Ltd. at page 431 of Tata Engineering and Locomotive Company Limited Vs. Their Workmen, :

6. The conclusion reached by the Tribunal that the settlement was not just and fair is again unsustainable. As earlier pointed out, the Tribunal itself found that there was nothing wrong with the settlement in most of its aspects and all that was necessary was to marginally increase the additional daily wage. We are clear of the opinion that the approach adopted by the Tribunal in dealing with the matter was erroneous. If the settlement had been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers (in this case 71 i.e., 11.18 per cent) were not parties to it or refused to accept it, or because the Tribunal was of the opinion that the workers deserved marginally higher emoluments than they themselves thought they did. A settlement cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication. In this connection we cannot do better than quote extensively from Herbertsons Ltd. v. Workmen of Herbertsons Ltd. and Ors. (supra). Wherein -GOSWAMI, J. speaking for the Court observed:

"Besides, the settlement has to be considered in the light of the conditions that

were in force at the time of the reference. It will not be correct to judge the settlement merely in the light of the award which was pending appeal before this Court. So far as the parties are concerned there will always be uncertainty with regard to the result of the litigation in a Court proceeding. When, therefore, negotiations take place which have to be encouraged, particularly between labour and employer, in the interest of general peace and well being there is always raised as far-back as 1968, the very fact of the existence of a litigation with regard to the same matter which was bound to take some time must have influenced both the parties to come to some settlement. The settlement has to be taken as a package deal and when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so far as the award is concerned, it cannot be said that the settlement as a whole is unfair and unjust.

** ** * ** * We should point out that there is some misconception about this aspect of the case. The question of adjudication has to be distinguished from a voluntary settlement. It is true that this Court has laid down certain principles with regard to the fixation of dearness allowance and it may be even shown that if the appeal is heard the said principles have been correctly followed in the award.

That, however, will be no answer to the parties agreeing to a lesser amount under certain given circumstances. By the settlement, labour has scored in some other aspects and will save all unnecessary expenses in uncertain litigation. The settlement therefore, cannot be judged on the touchstone of the principles which are laid down by this Court for adjudication.

"There may be several factors that may influence parties to come to a settlement as a phased endeavour in the course of collective bargaining. Once cordiality is established between the employer and labour in arriving at a settlement which operates well for the period that is in force, there is always a likelihood of further advances in the shape of improved emoluments by voluntary settlement avoiding fiction and unhealthy litigation. This is the quintessence of settlement which Courts and Tribunals should endeavour to encourage. It is in that spirit the settlement has to be judged and not by the yardstick adopted in scrutinising an award in adjudication. The Tribunal fell into an error in invoking, the principles that should govern in adjudicating a dispute regarding the dearness allowance in judging whether the settlement was just and fair.

** * ** * ** "It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that completely outweighs all the other advantages gained the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As

stated elsewhere in the judgment we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement had since expired and we are informed that the employer and the 3rd respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement".

The principles thus enunciated fully govern the facts of the case in hand, and, respectfully following them, we hold that the settlement dated February 7, 1970 as a whole was just and fair". (emphasis is given by me).

According to me, the observations made by the Supreme Court which I have given emphasis go against the Petitioner Union. In my opinion the aforesaid observations of the Supreme Court have to act as beacon light for resolving the disputes broadly and not by any arithmetical calculations and not by distinguishing every such ruling by hairsplitting of the facts and the observations found in such judgments. There would hardly be any similarity between the facts of two judgments. We have to consider and bear in mind the ratio and the essence of the precedents.

5. Shri Nayak the learned counsel for the Respondent Company has submitted in support of the impugned award that the Respondent Company is an All India establishment having branches in different States. He has laid great emphasis on the fact that in view of the settlements with the recognised union functioning all over India the service conditions including the emoluments have been uniformly arrived at. There have been several settlements with the recognised union and a substantially large majority of the workmen even in the Bombay region have accepted the settlement and the benefits. He has stressed the point that these settlements have not been challenged anywhere else except in the present reference. He further pointed out that a few workmen represented by the Petitioner Union, which according to the learned counsel is a minority Union, have refused to accept the settlement but got the benefits of these settlements through the process of the Tribunal. Shri Nayak has pointed out that if the contentions of the Petitioner Union are accepted in that case it would create a total chaos and imbalance in the service conditions in the undertaking at Bombay and elsewhere. Shri Nayak has pointed out that in view of the settlements at present the Respondent Company is enjoying Industrial peace and all the workmen except the handful represented by the Petitioner Union in Bombay are fully satisfied. Shri Nayak has criticised that the Petitioner Union had also accepted the benefits of the settlement under the garb of under protest. He has pricked the Petitioner Union by pointing out that only 11% of the workmen have given so- called protest to the settlement while others have happily accepted even in Bombay the last settlement dated September 30, 1999. Shri Nayak has therefore submitted that a very large majority of the workmen have accepted the

settlement, and therefore, they are deemed to have been a binding effect on the minority represented by the Petitioner Union. The learned counsel has pointed out that the demands which were the subject matter of the reference were completely covered by the settlements and all the categories of the workmen have been benefited by these settlements. Shri Nayak has pointed out that every settlement has to be considered as a package deal and not in a piecemeal manner. Shri Nayak has pointed out that there has been rise in the total pay packets of the workmen and improvement in all other service conditions. He has also drawn my attention to the fact that the workmen were given dearness allowance on higher basis in every settlement and finally in the year 1999 it has been linked with the CPI. In every settlement an additional dearness allowance and increase in quarterly dearness allowance was provided for. According to the learned counsel, the entire award is based on reasons and has considered the merits and it cannot be said that it is a perverse or baseless award. According to the learned counsel, the Tribunal has considered the demands in the light of the settlements though subsequently arrived at during the pendency of the reference. Shri Nayak further pointed out that the total emoluments or pay packets of the workmen in the Respondent Company are higher than the comparable concerns. Shri Nayak has further submitted that merely because the respondent company has accepted to pay and it is financially sound, it cannot be said that all the demands of the workmen should be accepted in toto regardless of the principles of industry-cum- region thereby creating a total imbalance and chaos in the adjudication process. Shri Nayak has relied on the following judgments :

- (a) Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others, .
- (b) 1994 II CLR 203 , Tata Press Ltd. v. Tata Press Employee's Union.
- (c) New Standard Engineering Company Ltd. Vs. N.L. Abhyankar and Others,
- (d) 1981 FLR 354, Telco v. Their Workmen
- (e) 1965 II LLJ 110 , Amalgamated Coffee Estates v. Their Workmen.
- (f) Indian Overseas Bank Officers' Union, Madras Vs. Indian Overseas Bank, Central Office, Madras,
- (g) Tata Consulting Engineers Vs. Workmen,
- (h) PEICO Electronics & Electricals Ltd. v. PEICO Employees' Union.

6. I have carefully gone through the proceedings and the impugned award. I have also considered the settlements which were arrived at by the All India Recognised Union and the Respondent Company during the pendency of the reference as well as after the disposal of the reference. In the last settlement of 1999 the main grievance of the Petitioner Union in respect of dearness allowance has been resolved and the grant of dearness allowance has been linked with the CPI. It is not that the workmen were not given any dearness allowance at all in

the past. On the contrary every settlement has provided for rise in the total amounts payable by way of dearness allowance though there was no linkage with the CPI. All the settlements have every time increased the benefits and improved the service conditions. We cannot forget a very pertinent fact that all the workmen all over India have accepted these settlements and a vast majority of the workmen employed at Bombay have also accepted all these settlements. It is also significant to note that even the Petitioner Union has claimed and received the benefits under the settlement though under so-called protest. This fight given by the Petitioner Union, according to me, only appears to be a plank for its survival. The very fact that in the year 1999 its claimed membership was reduced to 23 out of 200 indicates that the remaining large majority are satisfied with the settlements and other service conditions. The Tribunal has considered the demands referred for adjudication item wise and has recorded its reason for not granting the same in the context of the settlements placed on record and according to me the Tribunal has rightly done so in the interest of the overall industrial peace. The Tribunal has considered the overall comparable concerns and the evidence placed by both the parties on record. The Tribunal has recorded its conclusion that the Respondent Company was paying better emoluments than the other comparable concerns. The Tribunal has considered all the demands and has given reasons independently holding that the demands were not justified. Though Shri Deshmukh was at pains to distinguish various demands in the reference from the demands in the settlements, I am not prepared to accept the contentions of the learned counsel that the settlements should be totally ignored and that every demand should be independently considered as justified. It appears that the Petitioner Union has merely made this reference its prestige point totally ignoring the fact that except 23 workmen all others have accepted the settlements. I am not able to accept the contention of Shri Deshmukh that the settlements cannot be considered fair and proper merely because they are accepted by the majority. In my opinion the workmen who are employed by the Respondent Company are wise enough to have accepted the benefits of the settlements considering all the facts and the realities of life. It cannot be said that the All India Union has acted in any way against the interest of the large majority of the workmen. Had it been so that Union would have been dislodged from its position and the Petitioner-Union would have replaced that Union by this time! In the democratic society if we cannot accept the majority version there will be certainly a chaotic situation. It is not always that the majority is always right but at the same time it cannot be said that the majority is always wrong. We cannot allow the minority to be oppressive of the majority. The minority union cannot adopt a tyrannical attitude. The very fact that the All India Union is representing the workmen employed all over the country in the establishments of the Respondent Company and the substantially large number of workmen have accepted the settlements, there has to be a legitimate inference that the settlements are reasonably acceptable to the workmen. I must observe that the Petitioner Union is following the dual or double standard. It wants the benefits of the settlement at the same time it wants to challenge the settlements. It is

acting like a man who wants all the benefits of marriage but not the marriage. I find no reason not to accept the settlements after having accepted the benefits flowing from the said settlements. In this regard I can do no better than reproduce the observations of the Supreme Court in the order in Civil Appeal No. 2942 of 1995, PEICO Electronics & Electricals Ltd. v. PEICO Employees' Union and Ors.

"We have heard learned counsel for the parties. It is not disputed that 75% of the workmen have accepted the terms of the settlements dated January 5, 1993. The High Court in the impugned judgment has mentioned that on the date of the settlement the total number of workman with the Management was 949 out of which about 240 had not accepted the benefits flowing from the award. It is not disputed before us that none of the two Unions are recognised under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. In the absence of there being a recognised Union, the "bargaining agent" on behalf of the workmen can only be the Union which has the majority of the workmen as its members. Although there is no material before us to indicate the relevant strength of the two unions but the fact remains that 75% of the workmen have accepted the terms of the settlement entered into by the Union respondent 2. This Court in Food Corporation of India Staff Union v. Food Corporation of India and Ors. (Civil Appeal No. 2336 of 1985) decided on February 17, 1995 has held that collective bargaining is the principal *raison d'être* of the trade unions. This Court further held that if there are more than two unions operating then the union which has the majority of the workmen as its members is to be recognised as the "bargaining agent". The recognition of the majority Union as the "bargaining agent" is in conformity with the concept of collective bargaining and "industrial peace". As stated above 75% of the workmen have agreed to the terms of settlement and in fact the settlement has \ \ already been implemented qua them. In this view of the matter, it is not necessary for us to go into the various other questions raised by the High Court. We are of the view that the High Court was not justified in brushing aside the will of the majority of the workmen on technical grounds".

The facts situation in that case was just similar to the facts situation before me. As in that case and in the present case also the will of the majority of the workmen has to be accepted by the Petitioner Union and it cannot persist to have independent and separate adjudication of its own demands when all such demands have been covered by the settlements with the All India TC Employees Union and the Respondent Company.

7. I do not find any substance in the Petition. Rule is discharged. No order as to costs.