
(2000) 04 BOM CK 0081
In the Bombay High Court
Case No : Writ Petition No. 250 of 2000

The Philips Workers" Union	Vs	APPELLANT
Philips India Ltd. and others		RESPONDENT

Date of Decision : 06-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 12, 18(1), 19(4), 2, 22

Citation : (2000) 3 ALLMR 201 : (2000) 4 BomCR 72 : (2000) 2 BOMLR 834 :
(2000) 4 MhLj 502

Hon'ble Judges : D.Y. Chandrachud, J;A.P. Shah, J

Bench : Division Bench

Advocate : Sanjay Uddeshi and Co, for the Appellant; P.K. Rele, A.G.P., for the Respondent

Judgement

Dr. D.Y. Chandrachud, J.—Rule, returnable forthwith. The respondents waive service.

2. By this petition under Article 226 of the Constitution, the petitioner which is a registered Trade Union claiming to represent the workers employed by the 1st respondent at its unit situated at Thane, seeks to challenge an order dated 13-10-1999 passed by the Deputy Commissioner of Labour. By the said order, the Deputy Commissioner of Labour has declined to admit a demand raised by the union in conciliation u/s 12 of the Industrial Disputes Act, 1947.

3. On 21-11-1997, the union raised a demand contending that machineries, equipment, activities and production units which had been moved out of the establishment by the company, be brought back forthwith and be installed at the Thane Plant. A settlement had been arrived at on 21-2-1998 between the 1st respondent company, the petitioner union and another union u/s 18(1) read with section 2(p) of the Industrial Disputes Act, 1947. After the aforesaid settlement came to be arrived at, the union, on 9-4-1998, complained that the second unit for the production of tube lights was removed from the factory "behind the back

of the workers" on the night of 28th and 29th March, 1998. In the said letter, the union alleged that the machines which had been removed from the plant, were installed at other locations and that the workers were being unilaterally redeployed by the company. A further letter dated 31-8-1998 was written by the union to the company in which a grievance was made that the management was not complying with the obligations imposed upon it by the industrial settlement. Thereafter, a further demand came to be raised by the union on 15-10-1998 in which, apart from the demand raised in the earlier letter dated 21-11-1997, the union contended that the company should revert back to a working week consisting of 44 hours.

4. Before the Conciliation Officer, 17 meetings took place between the union and the representatives of the 1st respondent. Ultimately, by the impugned order dated 13-10-1999, the Conciliation Officer has declined to admit the demands raised by the union in conciliation. The Conciliation Officer has noted that the Industrial Tribunal had rendered an award in a reference by which a working week of 48 hours had been settled. Thereafter, the award came to be challenged in the High Court and, in appeal, before the Supreme Court as a result of which the direction as regards a working week of 48 hours came to be confirmed. The industrial settlement signed on 23-2-1988, is to remain in force until December 2000 and Clause 20 of the settlement provides that no new demand will be (sic made) by the union which will constitute an additional financial burden on the management. On these grounds, the Conciliation Officer has declined to admit the demands of the union in conciliation.

5. In assailing the correctness of the order passed by the Conciliation Office, the learned Counsel appearing on behalf of the union submitted that the Conciliation Officer has, in the present case, transgressed the settled principles of law governing section 12(1) of the Industrial Disputes Act, 1947. Counsel submitted that in determining as to whether a dispute should be admitted in conciliation, it is not open to the Conciliation Officer to enter upon a detailed evaluation of the merits of the disputes. Counsel further submitted that the case of the union is that the company has failed to fulfil the obligations cast upon the management by the settlement signed in February 1998 that had given rise to an industrial dispute after the settlement. Our attention was also drawn to the provisions of section 19(4) of the Industrial Disputes Act, 1947 under which it is open to the appropriate Government to refer an award to the industrial tribunal or Labour Court if the Government considers that there has been a material change in the circumstances on which the award was based after the date of the passing of the award.

6. In dealing with these submissions urged on behalf of the union, learned Counsel appearing on behalf of the 1st respondent laid emphasis on the fact that a Settlement had been duly entered into in February 1998 and Clause 20 thereof provided that during the currency of the settlement, no demand involving a financial burden shall be raised. Our attention was also drawn to Clause 22 of the

Settlement which provides that unless specifically modified, the terms and conditions then in existence under previous settlements or awards shall be treated as a part of the settlement and shall continue to be in force.

7. In dealing with these submissions, reference must be made, at the outset, to the provisions of section 12 of the Industrial Disputes Act, 1947. Section 12 of the Act provides as follows :

"12. Duties of Conciliation Officers:-

(1) Where an industrial dispute exists or is apprehended, the Conciliation Officer may, or where the dispute relates to a public utility service and a notice u/s 22 has been given shall, hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the conciliation officer shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference, it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government."

Under the provisions of sub-section (1) of section 12, the Conciliation Officer is to hold conciliation proceedings where an industrial dispute exists or is apprehended. The officer is then to investigate into the dispute and "all matters affecting the merits and the right settlement thereof for the purpose of bringing about a settlement of the dispute. Wide powers are conferred upon the

Conciliation Officer in order to bring about an amicable settlement between the parties for the purpose of resolving industrial disputes. These powers are intended to subserve the salutary public interest of fostering industrial peace and harmony. If the conciliation proceeding ends in a settlement, the Conciliation Officer is required to intimate the appropriate Government and a settlement arrived at in Conciliation is given a high degree of sanctity by the provisions of section 18(3) of the Act. If a settlement ends in failure, the Conciliation Officer has to send a report to the appropriate Government which is empowered thereafter to make a reference to adjudication by the Industrial Court or Tribunal. These are significant provisions enacted with a view to fostering industrial peace and harmony. The power of the Conciliation Officer to decide whether to admit a demand in conciliation, is conditioned by whether an industrial dispute exists or is apprehended. It would not be appropriate for the Conciliation Officer, even before admitting the dispute in conciliation, to launch upon an elaborate or detailed investigation into the merits of the dispute or of the correctness of the rival submissions of the parties on the merits of the case before him. In fact, the position of law is well settled that even at a subsequent stage, the appropriate Government while deciding whether or not to refer a dispute for adjudication by the tribunal cannot conduct a detailed investigation into the merits of the case. The consideration of the merits of the dispute takes place under sub-section (2) of section 12 once the dispute is admitted in Conciliation. Sub-section (2) of section 12 empowers the Conciliation Officer to investigate the dispute and all matters affecting the merits in order to bring about an amicable resolution. Consequently, it will be erroneous for the Conciliation Officer to even decline to admit a demand in conciliation though an industrial dispute exists or is apprehended upon a view formed by the Conciliation Officer on the merits of the dispute. Conciliation is an important first stage provided by the law, attended as it is by a degree of flexibility and informality. The provisions for conciliation must be given full effect in order to enable the Conciliation Officer to persuade the management and the workmen to sort out their differences. The discretion conferred on the Conciliation Officer in sub-section (1) of section 12 in the case of undertakings which are not public utilities has to be exercised so as to effectuate the public purpose underlying the conferment of power.

8. In the present case, the Conciliation Officer has declined to admit the dispute in conciliation holding that there was a settlement between the parties: that the award of the industrial tribunal stipulating a 48 hours week had been confirmed right up to the Supreme Court and that, therefore, the dispute could not be taken into conciliation. We have already adverted to the demands raised by the union on 21-11-97, 9-4-98, 31-8-98 and 15-10-98. The union made a grievance about the removal of machineries by the management and had contended that the machineries must be brought back into the plant. The grievance made on 9-4-1998 was in respect of a situation which is alleged to have taken place on 28th and 29th March 1998, which was after the signing of the settlement. We

must make it clear that we are not called upon to determine the correctness of the claim made by the union or to comment upon the merits of the position adopted by the company in response thereto. The facts which have been narrated by us, would, however, be sufficient to indicate that there was enough material for the Conciliation Officer to hold conciliation proceedings because an industrial dispute, as defined by section 2(k) of the Act, did exist and in any event, was apprehended. The workers had made a grievance about the removal of machinery and equipment to other location and the impact this would have upon the conditions of service. As regards the settlement arrived at between the parties, we may only record the submission of the learned Counsel appearing on behalf of the union that it was the case of the union that the management had not fulfilled its part of the reciprocal obligations imposed by the Settlement. The impact of the settlement dated 21-2-1998 and of the award of the tribunal are matters of which due regard shall be had by the Conciliation Officer in the course of conciliation proceedings. We are, however, of the opinion that it would be manifestly contrary to the interests of justice and against industrial peace and harmony to shut the workman out at the very threshold. That is indeed the impact of the impugned order as a result of which the demand raised by the union has not been even admitted in conciliation after several meetings before the Conciliation Officer. Seventeen meetings took place before the conciliation officer before the impugned order came to be passed. Once again, we wish to make it clear that we are not recording any finding or making any observation upon the merits of the case or in regard to the grievance of the union. The facts and circumstances of the case would, however, indicate that the Conciliation Officer has completely erred in construing the scope of his powers u/s 12 of the Industrial Disputes Act, 1947 and in determining the merits of the demands of the union while declining to admit the dispute in conciliation.

9. In this view of the matter, the impugned order dated 13-10-1999 is set aside. The 2nd respondent shall hold conciliation proceedings u/s 12 of the Industrial Disputes Act, 1947 in accordance with law. While concluding, we wish to make it clear that we have not arrived at any finding on the merits of the case since the limited question before us was whether the demands raised by the union should be admitted in conciliation u/s 12 of the Act. The petition shall stand disposed of accordingly with no order as to costs.

Certified copy expedited.

All concerned parties to act on an ordinary copy of this order duly authenticated by the Sheristadar of the Court.

10. Order accordingly.