

(1999) 02 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No's. 7588 to 7593 of 1998

The Workmen and Allied Beedi Factories Workers"
Association, Mysore

APPELLANT

Vs

Presiding Officer, Industrial Tribunal, Bangalore and Another

RESPONDENT

Date of Decision : 01-02-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1) (d), 19, 19 (2), 19 (3)

Citation : (2000) 85 FLR 277 : (2000) ILR (Kar) 2459 : (1999) 5 KarLJ 418 :
(2000) 4 KCCR 243 SN

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Sri M.C. Narasimhan, for the Appellant; Sri K. Kasturi and Sri Mehaboob Ali Khan, Additional Government Advocate, for the Respondent

Judgement

1. In all these writ petitions the petitioner is common union. At the instance of this union, six disputes between the management of 2nd respondent and the union had been referred u/s 10(1)(d) of the Industrial Disputes Act (hereinafter referred to as "the Act") for adjudication. The disputes had been registered in the year 1991. Subsequently, the points of dispute had been altered and substituted by way of corrigendum. All the six disputes had been clubbed together and common evidence was recorded. The evidence of the workmen was over in the year 1993 and the evidence on the side of the management was completed in the year 1994. Thereafter, the union presented its arguments and the matter was posted for the arguments on the side of the management. Thus, the disputes had reached the state of disposal as hearing the arguments on the side of the management alone was pending. At that juncture, the proceedings took a different direction as the rival union, namely Mangalore Ganesh Beedi Works Employees Association, had filed an application to implead it in the proceedings.

2. The application for impleading was seriously opposed by the petitioner-union.

As a result of which, the application was rejected by the Tribunal by an order dated 15-4-1996. The said order was the subject-matter of challenge in W.P. No. 12400 of 1996 in this Court. The said writ petition was dismissed on 8-7-1996 but in paragraph 3 of the order it was observed as follows:

"I make it clear that the order passed by the Tribunal or by this Court in this proceedings will not in any way affect the trial on that issue raised by the management and the Tribunal is free to deal with the case if any such issue is raised by the management".

Thereafter, in one of the disputes the management filed a joint memo before the Tribunal stating that they had settled the demands with the rival union that tried to implead itself but failed. A request was made to the Tribunal to accept the said settlement as Award. The management did not lead any evidence on the said joint memo. The petitioner-union filed its objections to the joint memo. Followed by that, similar memos had been filed by the management in respect of the sister concerns. The Tribunal accepted those memos and has disposed of the disputes in terms of the settlements arrived at between the management and the union which tried to get implead itself in the proceedings. Aggrieved by the same, the petitioner-union has filed these writ petitions challenging the awards passed by the Tribunal.

3. The main attack of petitioner-union is that the Tribunal should not have accepted the alleged settlement between the management and the rival union and the awards passed are contrary to law. The petitioner alleges that the settlement arrived at was a collusive settlement and the Tribunal failed to take note of the same.

4. Statement of objections is filed on behalf of the management elaborately narrating the circumstances under which the settlement was arrived at and justifying the impugned awards of the Tribunal. According to the management, the settlement arrived at was accepted by the majority of the employees and the same is not liable to be interfered with.

5. Elaborate arguments have been advanced by Mr. M.C. Narasimhan, learned Counsel for the petitioner and Mr. K. Kasturi, learned Counsel for the 2nd respondent-management. Both the learned Counsel have cited number of decisions in support of their respective case. However, it is not necessary to advert to all those contentions and the decisions for the simple reason that the issue for consideration by this Court is whether the impugned awards is legal, valid and justified. Therefore, having regard to the facts and circumstances of these matters, the Court restricts its consideration with regard to the justification of the impugned awards.

6. From a perusal of the impugned awards it is clear that the petitioner-union submitted its charter of demands as far back as on 6-8-1977 and 8-11-1979. The Government referred the same to the Tribunal for adjudication u/s 10(1)(d) of the Act vide Order No. 13 of 19-2-1981 and the subsequent corrigendum

dated 28-8-1981. As already stated above, the Tribunal conducted the proceedings and the evidence on both sides was completed in the year 1994 and thereafter the matters were posted for arguments. The arguments on behalf of the petitioner-union was completed and the matters were posted for the arguments on behalf of the 2nd respondent-management. At that juncture the new events took place.

7. After the disposal of W.P. No. 12400 of 1996 with the observation extracted above, the 2nd respondent filed a joint memo stating that they had settled the demands with the rival union that sought to be impleaded and requested the Tribunal to accept the said settlement as award. The 2nd respondent did not lead evidence on the joint memo. On the other hand, the petitioner-union filed its objections to the said joint memo.

8. It is stated that in the middle of 1996 similar joint memos were filed by the 2nd respondent stating that the demands raised by the union and the points of dispute referred for adjudication are one and the same and common to all the establishments to which the 2nd party-management was the main management. The Tribunal had taken the joint memos filed by the 2nd respondent and similar issues were framed in all the references. In paragraph 15 of the impugned award the issues are mentioned. While answering the said issues, the Tribunal recorded its findings at paragraphs 16, 17 and 18. The case of the petitioner-union is referred to in paragraph 19. The statement of WW-3 is referred to the effect that other employees of the 2nd respondent have received the benefits of the settlement and except 7 members, all other workers have settled their claim and got the benefits pursuant to the said settlement. The Tribunal has also referred to the letter written by WW-3 to the 2nd respondent requesting to extend the benefits of the settlement to all the employees, including him. At paragraphs 20 to 28 with reference to the joint memos filed by the 2nd respondent and the rival contentions, the points of dispute are answered in the affirmative holding that the settlement dated 19-3-1996 is fair, proper and the same have been accepted, In the operative portion of the impugned award it is stated that the references are disposed of in terms of the memorandum of settlement dated 19-3-1996 and the said memorandum of settlement shall be part and parcel of the award passed by the Tribunal.

9. It is relevant to mention at this stage that the duration of the settlement is 5 years from 1-4-1996 to 31-3-2001. The Labour Court has recorded a finding in the impugned awards passed by it with reference to rival contentions urged by the learned Counsel appearing on behalf of the petitioner and the 2nd respondent referring to various judgments of the Apex Court referred in the award. The settlements referred to above are based on the charter of demands dated 12-6-1996 submitted by the other union which was sought to be impleaded before the Tribunal. Undisputedly, it is not a conciliation settlement. The Tribunal has referred to various terms and conditions of the settlement and proceeded to record that from very recitals of the settlement it is clear that the

2nd respondent and the Employees Union have settled the matter with a view to maintain cordial industrial relationship and co-operation. After prolonged discussion, they have entered into the settlement. At paragraph 17 the Tribunal has referred to the clause in the settlement that the said association agreed to file a copy of the agreement in the disputes pending between the petitioner-union and the 2nd respondent with regard to the charter of demands. At paragraph 18, placing reliance on the judgment of the Apex Court in the case of *Herbertsons Limited v The Workmen of Herbertsons Limited and Others*, it has proceeded to consider the settlements entered into between the 2nd respondent and other association and came to the conclusion that the same is fair and acceptable. The Tribunal also formulated a point as to whether the majority of the workmen in the 2nd respondent have accepted the settlement or not. In that background, the matter was examined.

10. At paragraph 18 the Tribunal has stated that out of 328 employees of the 2nd respondent, 318 employees have received the benefits by accepting, the settlement and by executing individual receipt-cum-declarations, which constitutes 97% of the total workmen in the 2nd respondent. At paragraph 21 the Tribunal has referred to the fact of acceptance of the benefit of the settlement. While answering the contention of the union, at paragraph 21 the Tribunal has recorded that the statement made on behalf of the petitioner-union that the workmen have signed the settlement and individual declarations were submitted on account of the harassment and threat caused by the 2nd respondent. The Tribunal has recorded that this contention has to fail because no such allegations of mala fide, fraud or threat is substantiated by the union by producing documentary or oral evidence.

11. Thus, the Tribunal proceeded to record a finding that on the basis that majority of the workmen have resigned, joined the employees association for the delay caused in the functioning of first party union. In support of this finding no material is produced by the 2nd respondent-management. The further finding in the same paragraph that "that; by itself shows that the workmen were not interested in continuing the membership with the union but to form a new union and settle their disputes and put an end to it after the 2nd respondent-management was taken over by new partners". This finding is also without any material on record.

12. At paragraph 22 the Tribunal has considered the merits of the dispute with reference to the terms and conditions of the settlement. No details or comparative figures with reference to the claim made by the first party union, the terms and conditions agreed upon by the 2nd respondent and the Employees Association, their legal entitlement etc., are mentioned. However, a reference has been made to the evidence of WW-3 to the effect that the employees of the respective 2nd respondent-establishments have availed the benefits under the settlement ranging from Rs. 500 to Rs. 1,000. Placing reliance on the said evidence, the Tribunal came to the conclusion that the settlement has been given

effect to and the same has been accepted and the workmen are enjoying the benefits without any protest or reserving their liberty. The settlement has not been challenged by the employees. They have accepted it by signing the individual declarations. What can be noticed from these findings are, the Tribunal has proceeded to examine the matter on the premises that the terms and conditions of the settlement were availed without protest and therefore a finding is recorded that the terms and conditions of the settlement are fair and reasonable. The Tribunal has, placed reliance on the individual receipt-cum-declarations, and has concluded the matters as settled. But, none of those employees have been examined before the Tribunal.

13. The question for consideration before the Tribunal was that the charter of demands were raised and the disputes were referred to the Tribunal at the instance of the petitioner-union and on the basis of the charter of demands placed after a lapse of 15 years and the settlements arrived at by the management with the other union would have taken away the right of the petitioner-union to the subject-matter before the Tribunal. The Tribunal has not examined the matter in this regard.

14. Beside the points of dispute, the Tribunal has proceeded to examine the matters blaming the petitioner-union stating that the aggrieved workmen have not placed any documentary evidence to show that the settlements arrived at between the other union and the management were with mala fide intention and that they are getting less emoluments than for which they are legally entitled to with reference to the notification under the Minimum Wages" Act. The Labour Court overlooked the points of dispute referred to it and the evidence adduced by the petitioner-union in that regard. It is not the petitioner-union which has relied upon the settlements before the Tribunal.

15. It was the statutory duty of the Tribunal to consider the fairness and reasonableness of the settlements for being accepted as award on the material available on record. Since the Tribunal has placed reliance on the settlements, the duty was cast upon the management to place positive and substantive evidence on record with reference to the terms and conditions of the settlements to show that the points of dispute referred to at the instance of the petitioner-union have been settled keeping in view the entitlement of the workmen with regard to various aspects and answer the points of dispute with reference to the claim and the settlements based on the evidence placed on record. While considering the dispute, if any of the parties to the dispute place reliance on the settlement and seeks to accept the same as award in the disputes, such party must establish that the terms and conditions of the settlements are fair and reasonable with reference to the points of dispute.

16. In the instant case, having placed reliance on the decision of the Supreme Court in *Herbertsons case*, *supra*, the burden has been shifted on the petitioner-union to prove that the settlements arrived at were with mala fide intention and the terms and conditions thereof are less favourable to the workmen. The

Tribunal came to the conclusion that in the absence of documentary evidence on the issues framed with reference to the settlements, a finding is recorded that the declaration of the workmen constitute presumptive proof of the fact that the signatories are members of the Employees Association and they have accepted the same without protest. This approach of the Tribunal while considering the reasonableness and fairness of the settlements is absolutely contrary to the law laid down by the Apex Court.

17. In paragraph 25 the entire case law on the subject has been dealt with and the reliance placed on behalf of the petitioner-union are also referred to. But, a finding is not recorded with regard to the reliance placed on the decisions by the respective parties and no reasons are assigned for not accepting the case of the petitioner-union and for accepting the case of the management.

18. At paragraph 26 again the Tribunal examined the point with reference to the majority of the workmen accepting the settlements in the course of collective bargain and it is held that settlements are binding on the workmen in the interest of uniformity and industrial peace. I have carefully gone through the impugned awards and the material available on record. The Tribunal has failed to discharge its statutory duty in not recording a finding with regard to the fairness and reasonableness of the settlements. On this ground alone the impugned awards are liable to be quashed.

19. The Tribunal has not adverted to the evidence on record with reference to the points of dispute referred to it for adjudication on the charter of demands submitted by the petitioner-union. Without considering the rival contentions of the respective parties, findings are recorded without answering the real question which was required to be answered in relation to the fairness and reasonableness of the settlements. The charter of demands, the reasonableness and fairness of the settlements arrived at, the entitlement of the workmen in law should have been discussed. That has not been done by the Tribunal. The management should have placed material before the Tribunal in support of its action. Mr. Kasturi, learned Counsel for the management was unable to point out any material in this regard.

20. The Tribunal has proceeded to consider the entire case beyond the points of dispute and the law required to be applied. There is no certification with reference to the material evidence on record before passing the impugned awards accepting the terms and conditions of the settlements and that they are fair and reasonable. In my considered view, the Tribunal has not applied its mind, not assigned valid and cogent reasons in support of its conclusions. On the other hand, the findings recorded with reference to the settlements entered into by the 2nd respondent-management without considering the strong opposition made by the petitioner-union is bad in law. The case of the petitioner-union has been totally ignored.

21. The Tribunal has proceeded to accept the settlements solely on the ground

that majority of the workmen have accepted the same, gave declarations and obtained the benefits. Mere execution of receipt-cum-declarations should not have been construed that the workmen submitted resignation to their membership in the petitioner-union and the findings to that effect in the impugned awards are erroneous in law. Beyond the points of dispute referred to for adjudication, whatever done by the Tribunal is beyond the scope and ambit of the disputes. Therefore, the impugned awards are liable to be quashed.

22. In view of my above findings, the reliance placed on the decisions by the learned Counsel for the petitioner and the learned Counsel for the 2nd respondent-management need not be referred to in this order.

23. One of the attack made to the impugned award by the petitioner-union relates to the period of operation of the settlements arrived at. As per the settlements, the same will be operative for a period of five years. The award has been passed in terms of the settlement. As per Section 19(2) of the Act the settlement shall be in force for the period agreed upon by the parties but as per sub-section (3) thereof an award shall be in operation for a period of one year. Mr. K. Kasturi, learned Counsel for the 2nd respondent placed reliance on the decision in *M/s. Garment Cleaning Works v D.M. Aney and Another*, to contend that if the Tribunal pass awards in terms of the settlement by annexing the settlements with the awards, such settlements shall remain in operation for more than one year. Per contra, Mr. M.C. Narasimhan, learned Counsel for the petitioner placed reliance on the decision in *Indian Detonators Limited v I.D.L. Workers' Union*. In the light of the rival contentions and the reliance placed on the decisions cited supra, let me examine the correct position of law. Sub-section (2) of Section 19 of the Act deals with settlement and sub-section (3) deals with award. In order to give harmonious construction to the statutory provisions, provisions should be interpreted in such a way that each provision should be in effect and no provision become redundant. If such an interpretation is given, the period of settlement beyond one year cannot be the period of award and the award shall be confined only for one year in view of the expression "subject to the provisions of this section" in Section 19(3) of the Act. This view is supported in the decision rightly relied upon by Mr. M.C. Narasimhan for the petitioners. In that decision it is held as under:-

"..... Therefore, it was urged that an award in terms of a settlement would, like a settlement, be in operation for the period agreed upon as provided by Section 19(2) of the Act.

I am afraid it is impossible to agree with this contention. An award cannot be an award for one purpose and a settlement for another purpose. A settlement which merges into an award loses its character as a settlement once it becomes an award. It will operate as an award and it will be in operation for the period provided by the statute. The expression "subject to the provisions of this section" in Section 19(3) of the Act refers only to those provisions which are applicable to award and not to settlements. Such provisions are contained in the

two provisions to Section 19(3), in Section 19(4) and in Section 19(6). The learned Counsel for the petitioner contended that it would be unreasonable to hold that while a settlement arrived at in the course of conciliation proceedings would be binding for the period agreed upon, an award in terms of a settlement would be binding for a period of one year only. He questioned why a greater sanctity should be attached to a settlement arrived at in the course of conciliation proceedings rather than to an award of an Industrial Tribunal embodying the terms of settlement even after determination that the terms were just and fair.

Possibly it is because a Conciliation Officer has greater freedom of action, and, before he reports to the Government that a matter has been settled by agreement between the parties he investigates with a view to find out whether the agreement represents the agreement of all the workmen. An Industrial Tribunal, notwithstanding that its award is binding on all the workmen, may not have the same freedom to make a roving investigation to find out whether the agreement represents the agreement of all the workmen, though its award is binding on all the workmen. On the other hand, the plain truth may be that the situation was not contemplated by the legislature. But, effect must be given to the provisions of the statute as they stand and / must hold that the award was in operation for a period of one year only".

. Be that as it may, since it is held that the points of disputes referred to the Tribunal should have been adjudicated strictly in accordance with the reference and the acceptance made by the Tribunal of the settlement arrived at with the rival union by the management was not warranted and cannot be sustained, question of considering the attack made and the rival contention with regard to the period of award does not arise.

24. For the reasons stated above, the impugned awards of the Tribunal cannot be sustained and the same are liable to be quashed.

25. Accordingly, the writ petitions are allowed and the impugned awards of the Tribunal made in I.D. Nos. 13 to 18 of 1991 are quashed. The disputes are restored to the file of the Tribunal. The Tribunal is directed to proceed with the disputes and dispose of the same within a period of three months from the date of receipt of a copy of this order.