
(1972) 06 KAR CK 0027
In the Karnataka High Court
Case No : Writ Petition No. 769 of 1970

Workmen of Hindustan Machine Tools Ltd.	APPELLANT
Vs	
C.N. Nanjappa and Others	RESPONDENT

Date of Decision : 26-06-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 12, 12 (3), 18, 18 (3)

Citation : (1984) ILR (Kar) 97

Hon'ble Judges : Sadanandaswamy, J;Chandrasekhar, J

Bench : Division Bench

Advocate : M.C. Narasimhan, for the Appellant; H.N. Narayan, H.C.G.P. for R-1 to R-3, K. Balakrishna Rao, for N. Santosh Hegde, for R-4 and P.P. Bopanna, for R-5, for the Respondent

Final Decision : Dismissed

Judgement

Chandrasekhar, J.—The workmen of Hindustan Machine Tools Limited, represented by the sectionretary, HMT Employees" Association (herein-after referred to as the Employees" Association), have presented this petition under Articles 226 and 227 of the Constitution. The Employees" Association and respondent-4, H M T Karmika Sangha (hereinafter referred to as the Karmika Sangha), are two rival unions of workmen of Hindustan Machine Tools (herein-after referred to as the Factory), the Genera) Manager of which has been impleaded as respondent-5.

2. On 7-1-1970, a settlement was reached between the management and respondent-5 (hereinafter referred to as the Management), and the Karmika Sangha which purported to represent the workmen of the Factory. The settlement was regarding revision of the wage structure, for the workmen. In this petition, the Employees" Association has impugned this settlement and has prayed for the following reliefs, inter alia:

(a) issue of a writ of certiorari quashing the settlement ;

(b) issue of a writ of mandamus directing the Conciliation Officer, the Commissioner of Labour and the State of Mysore, not to treat the impugned settlement as one arrived at in the course of the conciliation proceedings and binding on all workmen of the Factory ; and

(c) issue of writ of mandamus directing the Conciliation Officer (respondent-1) to hold conciliation proceedings on the basis of the demand made by the Employees' Association.

3. At the outset, certain material facts which are not in dispute may be stated : Each of these two rival unions has been claiming to be the more representative organisation having a larger membership of workmen of the Factory. The question as to which of them is the majority union, is still pending determination by the Mysore State Industrial Relations (Implementation and Evolution) Committee. In the year 1969, there was a settlement between the Management and the Karmika Sangha which purported to represent the workmen of the Factory, regarding the wage structure for workmen. On 30-8-1969, the Employees' Association issued a notice (Ext. B) to the Management demanding revision of the wage structure. A copy of that notice was sent to the Conciliation Officer; By his letter dated 3-9-1969 (Exhibit "C". the Conciliation Officer called upon the Employees' Association to send five copies of their statement of demand. On 3-10-1969, the Employees' Association sent five copies of such statement. On 6-10-1969, the Conciliation Officer sent to the Management a copy of such statement. In the meanwhile, the Karmika Sangha also made a similar demand for revision of the wage structure. It would appear that OD 2-1-1970, the Conciliation Officer issued notices to the Management and the Karmika Sangha under Rule 9 of the Industrial Disputes (Mysore) Rules 1947, (hereinafter referred to as the Rules) intimating his intention to commence conciliation proceedings. Such notice was sent to the Employees' Association. On 5-1-1970, the Employees' Association addressed a letter (Ext. "E") to the Conciliation Officer intimating that the Management and the Karmika Sangha were likely to arrive at a settlement without notice to the Employees' Association. It requested the Conciliation Officer to include it as a party to contemplated settlement. On 7-1-1970, the Management and the Karmika Sangha which purported to represent the workmen, entered into a settlement. The Conciliation Officer affixed his signature at the foot of the deed of settlement (Exhibit-A) and sent a report of that settlement to the Government. On 11-1-1970, the Employees' Association submitted a memorandum to the Minister for Labour complaining that the said settlement dated 7-1-1970 was unjust, unfair and illegal and requesting that the conciliation proceedings should be continued by the Conciliation Officer. On 30-1-1970, the Management informed the Conciliation Officer that as the Management had entered with the Karmika Sangha a settlement which was binding on all the workmen, the demands raised by the Employees' Association in regard to the same matter, did not survive. A copy of this letter was forwarded by the Conciliation Officer to the Employees' Association on 11-2-1970.

4. In this petition, Mr. M. C. Narasimhan, learned Counsel for the Employees' Association, contended that as the Employees' Association had a larger membership of workmen than the Karmika Sangha, the Management should have carried on negotiations and entered into settlement with the Employees' Association that the Management was not justified in by passing the Employees' Association and entering into a settlement with the Karmika Sangha which had a smaller membership, that the Conciliation Officer should have notified the Employees' Association and heard it before he treated the said settlement as one entered into in the course of the conciliation proceedings and reported such settlement to the Government, that the action of the Conciliation Officer ignoring the Employees' Association had vitiated the conciliation proceedings and that hence the said settlement should not be considered as one entered into in the course of the conciliation proceedings and binding on all workmen u/s 18(3) of the Industrial Disputes Act, 1947, (hereinafter referred to as the Act). It was also contended by Mr. Narasimhan that in the absence of valid settlement arrived at in the course of the conciliation proceedings, it was the duty of the Conciliation Officer to proceed with the conciliation proceedings in respect of the demand raised by the Employees' Association.

5. On the other hand, Mr. P. P. Bopanna, learned Council for the Management, submitted that the Management had recognised only the Karmika Sangha as the union representing the majority of workmen of the Factory, in accordance with the Code of Discipline laid down by the All Central Employers' and Workers' Organisation at the Sixteenth Session of the Indian Labour Conference held in May 1958, that the Management had all along been holding negotiations and reaching settlements with only the Karmika Sangha as representing the workmen of the Factory, that the Management was justified in entering into settlement with the Karmika Sangha as representing the workmen and that when such a settlement had been reached, the only course open to the Conciliation Officer was to recognise such settlement and to report the same to the Government u/s 12(3) of the Act. It was also contended by Mr. Bopanna that as a settlement reached in the course of the conciliation proceedings was binding on all the workmen under section. 18(3) of the Act, the Conciliation Officer could not hold any further conciliation proceedings ignoring such settlement. It was further contended by Mr. Bopanna that none of the reliefs sought for by the Employees' Association could be granted.

6. The Conciliation Officer has pleaded in his counter-affidavit that the recognition accorded by the Management to the Karmika Sangha, was in accordance with the Code of Discipline, that as the Management did not recognise the Employees' Association, but had recognised only the Karmika Sangha and had entered into a settlement with the Karmika Sangha, that such settlement was binding on all the workmen and that consequently the demand raised by the Employees' Association did not survive.

7. We shall now consider the first prayer of the Employees' Association, namely,

issue of a writ of certiorari quashing the impugned settlement. In SRI KRISHNARAJENDRA MILLS WORKERS" UNION v .. ASSISTANT LABOUR COMMISSIONER AND CONCILIATION OFFICER [1967(2) Mys.L. J. 174] the facts were very similar. There, the Management and one of the several trade unions had entered into a settlement in the course of the conciliation proceedings. A rival union of workmen moved this court in a Writ petition to quash that settlement. While declining to issue a certiorari, this court held that a settlement brought about through the Conciliation Officer, was an administrative act, and not a judicial act and was not therefore liable to be struck down by certiorari.

8. In the light of the aforesaid decision of this court, the prayer in the present petition for quashing the settlement, cannot be granted and must be rejected.

9. Mr. Narasimhan contended that even if a certiorari cannot be issued quashing that settlement, we should declare that the impugned settlement was not one arrived at in the course of the conciliation proceedings and hence not binding on all the workmen u/s 18(3) of the Act.

10. Mr. Bopanna raised an objection that a mere declaration cannot be granted by this court under Article 226 of the Constitution. Reliance was placed by Mr Bopanna on the decision of the Kerala High Court in Workmen of Standard Furniture Company, Ltd. Vs. District Labour Officer and Conciliation Officer and Others, That decision undoubtedly supports his contention.

11. But in A.B. Abdulkadir and Others Vs. The State of Kerala and Another, the Supreme Court, while allowing an appeal from the decision of the Kerala High Court in a Writ petition, declared certain rules to be invalid as such a declaration would give relief to the writ petitioners. Following the above decision of the Supreme Court, a Bench of Andhra Pradesh High Court granted in Natarajan (R.) and Others Vs. Regional Assistant Commissioner of Labour and Others, a declaratory relief in a Writ Petition.

12. In view of what the Supreme Court did in Abdul Kadir's case, the view taken by the Kerala High Court in the aforesaid case, is no longer good law. Hence we overrule the objection of Mr. Bopanna that a declaratory relief cannot be granted in a Writ Petition.

13. The role of the Conciliation Officer in promoting a settlement in the course of the conciliation proceedings, and the binding effect of such settlement on all workmen, have been explained in the following observations of the Supreme Court in The Bata Shoe Co. (P) Ltd. Vs. D.N. Ganguly and Others,

"It seems to us clear beyond doubt that a settlement which is made binding under section. 18 on the ground that it is arrived at in the course of conciliation proceedings, is a settlement arrived at with the assistance and concurrence of the Conciliation Officer for it is the duty of Conciliation Officer to promote a right settlement and to do everything he can to induce the parties to come to a fair and amicable settlement of the dispute. It is only such a settlement which is

arrived at while conciliation proceedings are pending that can be binding under section. 18.

In the present case also, the impugned settlement was reached after the Conciliation Officer had taken up conciliation proceedings and issued notices under Rule 9(2). Under section. 18(3) of the Act such a settlement would be binding on all the workmen and not merely on the workmen who were members of the Union which is a signatory to such settlement.

14. From the above observations of the Supreme Court, it is clear that the duty of the Conciliation Officer consists of not merely affixing his signature to such settlement and reporting such settlement to the Government but also seeing that such settlement is fair. When the Employees' Association had raised a similar demand in regard to the revision of the wage structure and sent to the Conciliation Officer a copy of the statement of such demand, the views of the Employees' Association in regard to the terms of the proposed settlement, could not be regarded as immaterial for ascertaining the fairness of such settlement. Especially when the Employees' Association claimed to be the majority union and the question as to which of the two rival unions was the majority union, was still undecided, the proper course for the Conciliation Officer was, in our opinion, to notify the Employees' Association also and to hear it also before coming to the conclusion whether such settlement was fair. The Conciliation Officer should have exercised his independent judgment and should not have been led away by the mere facts that the Management had recognised only the Karmika Sangha and had refused to negotiate with the Employees' Association.

15. Though the procedure adopted by the Conciliation Officer in the present case, was not fair and reasonable, the question is whether the settlement reached in the present case should be declared as not being a valid settlement in the course of the Conciliation proceedings. Mr. Narasimhan contended that the settlement should be declared so. In support of his contention, Mr. Narasimhan relied on a decision of a Bench of the Kerala High Court in *Monthly-rated Workmen of Pierce Leslie and Co. Ltd., Cochin Vs. Labour Commissioner and Chief Conciliation Officer, Kerala State, Trivandrum and Others*, . There also, there were two rival unions of workmen and the management entered into a settlement with one of them in the course of the conciliation proceedings. The other rival union assailed such settlement. Dealing with the question of the validity of such settlement, this is what their Lordships observed at page 246 :

"The Indian Trade Union Act, 1926, permits more than one association or workmen in the same establishment and does not endow any of those associations with a monopoly of the right of representation on the basis of superior strength of its membership or for any other reason. There can be no doubt, therefore, that both the Cochin Commercial Employees' Association and the Mercantile Employees' Association can coexist and agitate separately or together on behalf of their respective membership.... It seems to be clear that both the associations should have been permitted to participate in the

Conciliation proceedings u/s 12 of the Industrial Disputes Act, 1947."

16. However, their Lordships did not quash that settlement because the petitioner-association had not impleaded the rival union as a respondent in that writ petition- Moreover that decision was rendered before the Central Employers' & Workers' Organisation evolved the Code of Discipline in industries which provides inter alia that where there are several unions of workmen in an industry or establishment, only the one with the largest membership should be recognised.

17. As stated earlier, the impugned settlement was reached on 7-1-1970 and it provided that it shall be in force till 31-12-1972 but shall continue to be binding on the parties until it is terminated by giving two months notice. The settlement has been in operation for nearly 2 1\2 years. The averment in the counter-affidavit of the Management that not only the workmen who are members of the Karmika Sangha, but also all other workmen of the Factory, have been taking the benefits under the impugned settlement, has not been denied by the Employees' Association. If the workmen are dissatisfied with this settlement, it will be open to them to terminate it 6 months later by giving two months' notice. There is great deal of force in the submission of Mr. Bopanna that any unsettling of this settlement at this distance of time, is likely to create confusion and to lead to industrial unrest.

18. However, Mr. Narasimhan submitted that the Employees' Association presented this petition within about a month after the impugned settlement was reached, that as early as on 11-1-1970 the Employees' Association had addressed the letter (Exhibit "F") to the Minister for Labour complaining that the settlement had not been beneficial to them, that there was no occasion for the workmen who are members of the Employees' Association to express their protest or reservation while accepting the revised wages and that if the impugned settlement should be allowed to stand, the Employees' Association, would not be able to terminate it even after 31-12-1972 by issuing notice under section. 19 of the Act as it (the Employees' Association) was not a party to that settlement.

19. The apprehension expressed by Mr. Narasimhan that the Employees' Association may not be able to terminate the impugned settlement even after 31-12-1972 by giving notice under section. 19 of the Act, does not appear to be well-founded in view of the following observations of the Supreme Court in *The Associated Cement Companies Ltd. Vs. Their Workmen*, while construing the expression "any party bound by the award" occurring in sub-section(6) of section. 19 of the Act:

"The expression "any party bound by the award" obviously refers to, and includes all persons bound by the award u/s 18 We accordingly hold that on a fair and reasonable consideration u/s 19(6), the true position is that, though the expression "any-party bound by the award" refers to all workmen bound by the award, the notice to terminate the said award can be given not by any individual

workmen but by a group of workmen acting collectively either through the union or otherwise and it is not necessary that such a group or union to which it acts should represent the majority workmen bound by the award."

20. The above decision was rendered by the Supreme Court before the insertion of subsection. (7) in section 19 of the Act by the Industrial Disputes (Amendment) Act, 1964, which came into force on 19-12-1964. Subsection (7) of section. 19 provides that no notice under sub-section (2) or (6) shall have effect unless it is given by a party representing the majority of persons bound by the settlement or award. The position of law stated by the Supreme Court in the aforesaid observations, stands modified to some extent by the provisions of subsection (7) of Section. 19. Even so, if the Employees" Association represents the majority of the workmen, as it claims to do, there does not appear to be any impediment to its issuing a notice u/s 19 for terminating the impugned settlement after 31-12-1972. However, it is not necessary here to express any final opinion on the question as to the interpretation of the expression "any party bound by the award" in section 19(6) of the Act.

21. Having regard to all the circumstances of the case, we consider it inexpedient to exercise our discretionary jurisdiction to grant the declaration sought for by the Employees" Association. It follows that the other relief sought for by the Employees" Association, namely, directing the Conciliation Officer to continue the conciliation proceedings in regard to the demand raised by the Employees" Association in its notice of demand Exhibit "B", also cannot be granted.

22. With these observations, we dismiss this petition. However, in the circumstances of the case, we direct the parties to bear their own costs.