

(1998) 09 CAL CK 0052
In the Calcutta High Court
Case No : Writ Petition No. 250 of 1997

Workmen represented by Andrew Yule and Co. Ltd. and its Group (Calcutta Region) Clerical Staff Union APPELLANT

Vs

Learned Judge, Eighth Industrial Tribunal and Others RESPONDENT

Date of Decision : 16-09-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 18, 18(1), 18(2), 18(3)

Citation : (1999) 82 FLR 47 : (1999) 1 LLJ 1182

Hon'ble Judges : Satya Brata Sinha, J

Bench : Single Bench

Advocate : Arunava Ghosh and Anant Kr. Shaw, for the Appellant; Tapas Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Satya Brata Sinha, J.—This application is directed against an award dated November 14, 1996 passed by Mr. S.K. Banerjee, 8th Industrial Tribunal, West Bengal in Case No. VIII-212/1993 whereby and whereunder he passed an award against the petitioner union in favour of the Management. The fact of the matter lies in a very narrow campus.

2. On September 18, 1989 an agreement for payment of wages was arrived at with Andrew Yule & Co. Ltd. (Calcutta Branch) Employees' Union and the management which became effective from January, 1987 to December, 1990. The members of the petitioner union who are members of the first union came out thereof and started a separate union in the year 1990. The petitioner contends that the aforementioned agreement dated September 18, 1989 is not a Tripartite nor Bipartite settlement as it does not conform to the Rule 68 of the Industrial Disputes Rules, 1958. The petitioner union raised an industrial dispute as regards the said settlement pursuant whereunto conciliation proceedings were held. The said agreement also contained a provision as regards submission of a fresh Charter of Demand before six months of the expiry thereof. The said

settlement pursuant whereto conciliation proceedings were held. The aforementioned Andrew Yule & Co. Ltd. (Calcutta Branch) Employees Union also served a fresh Charter of Demand, The company hold discussions with the said union but did not hold any discussion with the petitioner whereafter the matter was again taken up by the Conciliation Officer.

3. The Conciliation proceedings have failed. A reference was made by the Appropriate Government for adjudication of the respondent Tribunal in relation to the following points:-

"1. Pay, Pay pattern, Pay fixation, Pay Scales and fitment benefits.

2. Dearness Allowance 3. House Rent Allowance."

4. The parties filed their written statements before the Tribunal and also adduced evidence. It appears that questioning the said reference the Management filed a Writ Application in this Court and a stay order was obtained. The petitioner preferred an appeal there against and the said appeal was allowed and the Writ petition was dismissed.

5. Thereafter the following award was made. A bare perusal of the impugned award as contained in Annexure G to the Writ application would reveal that the Learned Tribunal based his decision entirely on the aforementioned settlement entered into by and between the Management and Andrew Yule & Co, Ltd. (Calcutta Branch) Employees" Union (hereinafter referred to as "the said first Union")

6. The learned Tribunal in support of his aforementioned findings strongly relied on a decision of the Apex Court in the case of Tata Engineering and Locomotive Company Limited Vs. Their Workmen, In that decision the Apex Court had held that if the settlement had been arrived at by and between the company and the union of the workers 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 that case 71 i.e. 11.18%) were not parties to it or refused to accept it, or because Tribunal was of the opinion that the workers deserved marginally higher emoluments than they themselves thought they did.

7. In the aforementioned case three members of the union however had refused to abide by the settlement and on the facts of that case, the aforementioned observation had been made.

8. Unfortunately the Learned Tribunal did not consider the aforementioned judgment in its proper perspective inasmuch as the Apex Court laid down the law in the following terms: -

"7. There is no quarrel with the argument addressed to us on behalf of the workers that mere acquiescence in a settlement or its acceptance by a worker

would not make him a party to the settlement for the purpose of Section 18 of the Act (vide *The Jhagrakhan Collieries (P) Ltd. Vs. Shri G.C. Agrawal*, Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur and Others, It is further unquestionable that a minority union which consists of the majority of them enter into a settlement with the employer (vide *Tata Chemicals Ltd. Vs. The Workmen represented by Chemicals Kamdar Sangh*, But then here the company is not raising a plea that the 564 workers became parties to the settlement by reason of their acquiescence in or acceptance of a settlement already arrived at or a plea that the reference is not maintainable, because the Telco Union represents only a minority of workers. On the other hand the only two contentions raised by the company are:

(i) that the settlement is binding on all members of the Sanghatana including the 564 mentioned above because the Sanghatana was a party to it, and

(ii) that the reference is liable to be answered in accordance with the settlement because the same is just and fair.

And both these are contentions which we find fully acceptable for reasons already stated."

9. How far and to what extent a Bipartite settlement, if any, would be binding has been laid down in Section 18 of the Industrial Disputes Act which reads thus-

"18. Persons on whom settlements and awards are binding.-(1)A settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) Subject to the provisions of Sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under Sub-section (3-A) of Section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on--

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board (arbitrator), Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in Clause (a) or Clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

10. A bare perusal of the aforementioned provisions would clearly show that whereas the Bipartite settlement arrived at in terms of Sub-sections (1) and (2) thereof are not binding on all the workmen, only a settlement arrived at in course of conciliation proceedings thereunder which comes within the preview of Section 18(3) is binding on all the workmen. In other words in terms of Section 18 of the Act, a settlement in terms of Section 18(3) has been placed in the same pedestal as that of the award made by an Industrial Disputes Tribunal or Labour Court, as the case may be, but a reference made by Appropriate Government in terms of Section 10 of the Industrial Disputes Act could be maintainable. It may be that a settlement arrived at by a large number of workmen is presumed to be fair but such presumption is rebuttable. In the instant case, the parties filed their written statement and also adduced evidence. The learned Tribunal below did not consider the said evidence at all nor did he arrive at a finding as to whether the petitioner union had been also to rebut the said presumption. Each finding of the Learned Tribunal below is based on the settlement arrived at by and between the Management and the Union. In fact even in the operative portion, it has been held as follows:-

"In the written argument the Union workers claim scales of pay relating to 1099 points and the fitment benefit from January 1, 1992 as the non-unionised workmen were paid. It can be said in this connection that the Staff Union made a charter of demands on November 14, 1990 and they challenged the bi-partite settlement of April 1, 1991 and they claimed relief from January 1, 1991. Thee tribunal cannot go beyond the settlement of January 1, 1991. So, the claim of the union is untenable. Since the Bipartite Settlement is accepted by the majority Union, minority Union is to accept it, since it is reasonable and fair as per Hon"ble Supreme Court"s ruling."

11. It is profitable to refer to a recent decision of the Apex Court in the case of K.C.P. Limited Vs. Presiding Officer and Others,

12. In the aforementioned decision the Apex Court has clearly held that a Court or Tribunal must satisfy itself that a settlement was not ex facie fair, unjust or mala fide. Although even in that case only some of the employees who were parties to the union which had entered into a settlement has raised the question, keeping in view the fact that in terms of Section 18 of the Industrial Disputes Act, the minority union is also entitled to raise a dispute, the Learned Tribunal below misdirected himself in law in passing the impugned award based only upon the settlement arrived at by and between the Management and the Union. As indicated hereinbefore even the writ application filed by the Management before this Court questioning the said reference was dismissed. If a reference is made by the Appropriate Government in exercise of its power u/s 10 of the Industrial Disputes Act, the Tribunal being bound thereby, cannot indirectly arrive at a finding that the reference is not maintainable only because a settlement had been arrived at with another union. The question as to whether settlement has been arrived at by the Management with the majority union or minority union

becomes insignificant when an award has to be passed on the basis of the materials brought on records by the parties. The Tribunal may draw a presumption but when both the parties had adduced evidence, the matter has to be considered on the basis of the entire materials including the settlement.

13. This aspect of the matter has been considered by a Special Bench of this Court in *Bharat Barrel Drum Manufacturing Co. Ltd. v. A. Pyarelal* reported in 1996 (2) CHN 327.

14. In this view of the matter the impugned award cannot be sustained.

15. This application is allowed and the impugned award as contained in Annexure "G" is set aside and the matter is remitted back to the respondent-Tribunal for considering the matter afresh in accordance with law.

16. All parties are to act on a signed copy of the operative part of this judgment on the usual undertaking.