

(1999) 08 BOM CK 0098
In the Bombay High Court
Case No : O.O.C.J. W.P. No. 1925 of 1999

Yashwant Jagannath Ingawale and Others	APPELLANT
Vs	
Snowcem India Ltd. and Others	RESPONDENT

Date of Decision : 17-08-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(1)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2000) 84 FLR 467 : (2001) 3 LLJ 549

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Shah, J.—This petition under Article 226 of the Constitution is directed against the order dated July 9, 1999 passed by the Industrial Court Bombay dismissing Complaint (ULP) Nos. 90 to 101, 111 to 113, 118 and 119 of 1998 filed by the petitioners-workmen under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, hereinafter referred to as the Act. The 1st respondent Snowcem India Limited is a public limited company engaged in manufacture of cement based paints and other accessories. The 1st respondent is having manufacturing units all over India including a unit at Chandivali. In Chandivali Unit of the 1st respondent around 160 workers, including the petitioners, were employed by the 1st respondent. It seems that the company wanted to expand its activities at Chandivali and therefore it sought permission of the Government of Maharashtra for necessary expansion. However, the State Government declined to give such permission and therefore the company decided to shift its factory from the existing place at Chandivali to Sinnar in Nasik District. The State Government granted permission for shifting of the factory of the 1st respondent to Sinnar on certain terms and conditions mentioned in the letter of permission dated February 2, 1995. On January 8, 1998 the 1st respondent entered into a

settlement with the Bharatiya Kamgar Sangh which was then the recognised union. This settlement provided for voluntary retirement for the employees working at Chandivali Unit. Clause 13 of the said settlement which is material for the present petition reads as follows:

"In view of this comprehensive settlement covering all the liabilities of the company and the payments made to the employees as full and final settlement of all their dues, past, present and future and after having fulfilled all and every conditions stipulated by the Government of Maharashtra in their letter dated February 2, 1995 the Company's Unit in Mumbai will become non- operational effective from January 9, 1998. The parties clearly understand that the company will also be surrendering the electric power connections to the BSES as directed by the Government and consequently no manufacturing activities will be carried out thereafter."

2. On January 29, 1998 the petitioners approached the Industrial Court by filing the aforesaid complaints u/s 28 of the Act alleging unfair labour practice under Items 9 and 10 of Schedule IV of the Act and sought a declaration that the contract of employment continues to exist unless it is validly and legitimately terminated by the employer. It was the case of the petitioners before the Industrial Court that the right of Bharatiya Kamgar Sangh as recognised union to enter into any settlement with the employer cannot be disputed but such settlement arrived at u/s 18(1) of the Industrial Disputes Act, 1947 when resulting in termination of employment or non-employment of the petitioners, will not be binding on the petitioners. The petitioners contended that such settlement is not binding on the petitioners unless the petitioners themselves were parties to the settlement. The petitioners pointed out that the 1st respondent company has stated in the settlement that it was trying to shift all its manufacturing activities from the Chandivali unit to Sinnar. In such an event the petitioners also expressed their willingness to get themselves shifted to Sinnar and therefore according to the petitioners the contract of employment is liable to continue. It was also contended that if the settlement is resulting into non-employment, which is nothing but a closure of the unit, such a settlement would violate Section 25-O of the Industrial Disputes Act.

3. Alongwith the complaints the petitioners filed an application for interim reliefs and with consent of both sides it was directed that the services of the petitioners would not be terminated without following due process of law and the petitioners would continue to receive their salary, wages and allowances payable to them. The 1st respondent company filed its written statement raising certain preliminary objections to the maintainability of the complaints. In the meanwhile the company had declared closure with effect from January 23, 1999. According to the petitioners the closure declared by the company is totally sham and illegal inasmuch as the company has continued to pay wages to some of the employees other than the petitioners. By the impugned order dated July 9, 1999 all the complaints were dismissed by the Industrial Court upholding the preliminary

objections raised by the respondent company.

4. A reading of the order of the Industrial Court shows that the Industrial Court took a view that the settlement dated January 8, 1998 between the 1st respondent company and the recognised union was binding on the petitioners and since the dispute raised by the workmen in respect of the settlement was of collective nature, the complaints filed by individual employees are not maintainable under the provisions of the Act. In that regard the Industrial Court placed reliance upon the decision of this Court in the case of Maharashtra General Kamgar Union, Bombay Vs. Solid Containers Ltd. and others, . The Industrial Court also took a view that the complaints were barred u/s 59 of the Act in view of the previous complaint filed by the recognised union being complaint (ULP) No. 620 of 1995.

5. Mr. Pendse, learned counsel for the petitioners strenuously urged that the Industrial Court completely misdirected itself in holding that the complaints filed by the individual employees are not maintainable. Mr. Pendse submitted that the settlement dated January 8, 1998 results in declaring the 1st respondent company non-operational with effect from February 9, 1998 and therefore such a settlement cannot bind the workmen. He drew my attention to Section 18(1) of the Industrial Disputes Act which provides that the settlement which can be binding upon the parties must be between the employer and the workmen. Mr. Pendse submitted that any settlement, which is a settlement entered into by the recognised union on behalf of the workmen is binding on the workmen provided such a settlement is not resulting in dismissal, discharge or termination of employment of workmen. Mr. Pendse submitted that the view taken by the Industrial Court that the complaints by individual employee are not maintainable is contrary to the law laid down by this Court in the case of Rama Bala Kate and Others Vs. Walchandnagar Industries Ltd. and Others, , Bajirao Rajaram Patil Vs. Maharashtra State Co-operative Bank Ltd. and Another, and Tata Hydro Electric Power Supply Co. Ltd. and others Vs. Shri Narendra L. Mansukhani and others, . Mr. Pendse further submitted that the finding of the Industrial Court that the complaint was barred by Section 59 is totally perverse. He pointed out that earlier complaint being complaint No. 620 of 1995 was based on totally different cause of action. He also pointed out that the complaint being complaint (ULP) No. 103 of 1998 filed by Maharashtra General Kamgar Union is in respect of the challenge of settlement regarding its validity whereas the complaint filed by the petitioners questions the applicability and binding nature of the settlement and reliefs sought are totally different.

6. Mr. Cama, in reply, fairly conceded that the provisions contained in Clause 9 of the settlement relating to VRS are not binding on the workmen but according to Mr. Cama clause 13 which provides that the company shall become non-operational would bind all the workmen. Mr. Cama submitted that a large number of workmen have accepted the VRS under the settlement made with the recognised union. He submitted that bona fides of the union are not challenged

and therefore it must be held that the settlement in question binds all the I workmen of the Chandivali factory. Mr. Cama vehemently contested the claim of the petitioners that the settlement cannot bind on the employees in view of Section 18(1) of the Industrial Disputes Act. The argument of Mr. Cama is that the settlement itself does not specifically provide for termination or removal, or discharge of the workmen and therefore such settlement cannot be said not binding on the workmen merely because it results in stoppage of operation of the factory. Mr. Cama argued that in order to ascertain the validity of the settlement what is required to be considered are the terms of the settlement and not the effect of the settlement.

7. In order to appreciate the rival contentions advanced by the counsel appearing for the parties, it is necessary to refer to Section 18 of the Industrial Disputes Act. Section 18(1), which is material for this petition, reads as under:

"18. Persons on whom settlements and awards are binding:

(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement.

Provided that, where there is a recognised union for any undertaking under any law for the time being in force than such agreement (not being an agreement in respect of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee) shall be arrived at between the employer and the recognised union only; and such agreement shall be binding on all persons referred to in Clause (c) and Clause (d), of Sub-section (3) of this section".

8. On a plain reading of Section 18(1), it is seen that the settlement arrived at between the employer and the workmen otherwise than in the course of conciliation proceedings, is binding on the parties to the agreement. Admittedly, in the instant case, the workmen were not parties to the settlement in question and therefore the settlement is not binding on them u/s 18(1) of the Industrial Disputes Act. Proviso to Section 18(1) says that where there is a recognised union for any undertaking under any law for the time being in force such an agreement not being an agreement in respect of dismissal, discharge, removal, retrenchment and termination of service or suspension of an employee shall be binding on all workers. Thus the proviso makes it clear that the settlement arrived at with the recognised union is binding on all the workmen provided such a settlement is not in respect of dismissal, discharge, removal, retrenchment or suspension of an employee. In the present case Clause 13 provides that in the event of payment to the employees as full and final settlement of all their dues, past, present and future and after having fulfilled all the conditions of G.R. February 20, 1995 the company's unit in Mumbai will become non- operational effective from February 9, 1998. It is thus clearly seen that the settlement provides for closure and consequential termination of the employees. In my opinion, such an agreement cannot bind the workmen.

9. Mr. Cama vehemently contended that even if the settlement provides for closure of the undertaking, still such a settlement would be binding on all the employees. Mr. Cama placed reliance upon the decision of the I Supreme Court in the case of Parry and Co. Ltd. Vs. P.C. Pal and Others, . In the case of Parry and Co. the Supreme Court has laid down that it is within the managerial discretion of an employer to organise and arrange his business in the manner he considers best. So long as that is done bona fide it is not competent for a Tribunal to question its propriety. If a scheme for such reorganisation results in surplusage of employees no employer is expected to carry the burden of such economic dead weight and retrenchment has to be accepted as inevitable, however, unfortunate it is, so long as it is not vitiated by considerations of victimisation or unfair labour practice. In the present case the question is not of any employee becoming surplus as a result of reorganising the business. The settlement provides for complete closure of the business at Chandivali factory. It is difficult to see as to how decision in Parry & Co. is applicable to the facts of the present case.

10. Mr. Cama also brought to my notice the decision of the Supreme Court in the case of New Standard Engineering Company Ltd. Vs. N.L. Abhyankar and Others, . In that case the Supreme Court was concerned with the question involving fairness and justness of the settlement. The Supreme Court held that the justness and fairness of a settlement has to be examined with reference to the situation as it stood on the date on which it was arrived at. It is well-known that the possibility of an adverse decision by the Court operates as a positive force in favour of deliberate and careful effort by direct negotiation. Where a vast majority of the workmen signed the settlement and where the largest union is a party to the settlement and the bona fides of that union are not in dispute that will be a significant factor in favour of the settlement. I am afraid that this decision is also not of any assistance to Mr. Cama. The question involved in the instant case is not about the justness and fairness of the settlement but whether such a settlement is binding on the workmen. In my opinion, Clause 13 of the settlement cannot bind the workmen in view of the express provisions of Section 18(1) of the Industrial Disputes Act.

11. Next question to be considered is whether a complaint filed by the individual, employee is maintainable in law or not. The issue stands concluded by at least three decisions of this Court. In Rama Bala Kate and Ors. v. Walchandnagar Industries Ltd. and Ors. (supra) Justice sriKRISHNA observed as under:

"Mr. Ramaswami, learned Advocate appearing for the first respondent, contends that the industrial establishments of the first respondent in which the petitioners were engaged as contract labourers was sold to the second respondent some time in 1988 and as such the first respondent has no liability in the matter. Though this fact occurred during the pendency of the complaints and the Industrial Court had adverted to this fact, no attempt was made to place on record the agreement between the first and third respondents so as to ascertain

the exact liability of the two respondents by ascertaining the terms of the said agreement. Mr. Ramaswami urged that, under the judgment of the Supreme Court, the complaints and the writ petition would be barred and both would have to be dismissed. It is true that in the judgment in Raymond Woollen Mills case (supra) the Supreme Court has held that the provisions of Section 21 of the Act did not lead to the conclusion that a union other than representative union can appear in proceedings relating to all unfair labour practices, other than those specified in items 2 and 6 of Schedule IV of the Act. In the entire judgment of the Supreme Court nothing has been said to the effect, that the concerned employees, directly affected, could not maintain such a complaint. In any case, the provisions of Section 28 of the Act are clear and they give to the affected employees the right of moving the complaint against the employer. Such right can only be taken away by an express provision in the Act. There is no such provision in the Act. In these circumstances, I am unable to accept the contention of Mr. Ramaswami that the complaints by the employees affected invoking the provisions of Items 5 and 9 of Schedule IV of the Act were not maintainable. I, therefore, overrule the preliminary contention urged by the respondents as to the maintainability of the complaints and the writ petition."

12. Similar is the view taken by PANDYA J. in the case of Tata Hydro Electric Power Supply Co. Ltd. and Ors. (supra). Justice LODHA also took the same view in the case of Bajirao Rajaram Patil (supra).

13. Mr. Cama fairly conceded that Section 59 of the Act has no application to the present case. He however tried to contend that the present complaints are barred by the principles analogous to Section 11 of the C.P.C. The argument of Mr. Cama is without any merit. The previous complaint filed by the recognised union is based on totally different cause of action. The said complaint is still pending. Under the circumstances Section 11 is not even remotely attracted.

14. In the result petition succeeds. The impugned order of the Industrial Court is quashed and set aside. Complaint (ULP) Nos. 90 to 101, 111 to 113, 118, 119 of 1998 are restored to file and remitted back to the Industrial Court for hearing and final disposal in accordance with law. It would be open to the petitioners to amend the complaints if they so desire and apply for further interim reliefs. If such an application is made the same shall be dealt with by the Industrial Court in accordance with law.

15. Considering that the complaints are pending for considerable time, the Industrial Court shall dispose of the complaints as expeditiously as possible and preferably within four months from today.

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