HIGH COURT OF GUJARAT (*D.B.*)

Kinarivala R J K Industries
Versus
Workmen Employed

Date of Decision: 17 September 2009

Citation: 2009 LawSuit(Guj) 577

Hon'ble Judges: K S Radhakrishnan, Akil Kureshi

Case Type: Misc Civil Application; Misc Civil Application (Stamp Number); Misc Civil Application; Misc Civil Application (Stamp Number); Misc Civil Application; Misc Civil Application; Special Civil Application; Special Civil Application

Case No: 1508 of 2009; 32 of 2007; 3139 of 2006; 32 of 2007; 3139 of 2006; 3139 of 2006; 7745 of 1999; 7745 of 1999

Subject: Labour and Industrial

Acts Referred:
Industrial Disputes Act, 1947 Sec 19, Sec 18, Sec 18(3), Sec 12

Final Decision: Petition allowed

Advocates: Nanavati Associates, Party-in-Person

Cases Referred in (+): 2

Akil Kureshi, J

[1] Special Civil Application No. 7745 of 1999 was filed by the petitioner Company challenging award dated 20th July 1999 passed by the learned Presiding Officer, Special Labour Court, Ahmedabad in a reference filed by the respondent herein i.e. Union of the employees of the petitioner Company.

[2] The said petition came to be dismissed for non-prosecution. Applications came to be filed for restoration which also came to be dismissed for non-appearance or for non-removal of office objections. While taking up Misc. Civil Application No. 1508/09, considering the chequered history of number of applications and the fact that the petition is of the year 1999, we found it appropriate to hear the petition finally. However, to complete all formalities, the Misc. Civil Applications are granted and Special Civil Application No. 7745 of 1999 is restored to file on condition that the

petitioner pays cost of Rs. 5,000/- (Rupees Five Thousand only) to the respondent and also removes all office objections in the applications. Both things be done latest by 1st October 2009. Subject to the above, we have heard the main matter.

[3] Petitioner-Company has challenged the award by which the Labour Court granted certain benefits of higher pay to the workmen of the petitioner Company. Counsel for the petitioner mainly contended that previously in the year 1973 as well as in the year 1975, disputes were raised by some of the workmen regarding the same subject matter and such disputes were settled before the Conciliation Officer. He drew our attention to settlement dated 21.7.75 entered into between the workmen and the petitioner Company in presence of the Conciliation Officer during conciliation proceedings. He contended that such settlement would bind all workmen including those who were not parties to the settlement in view of scheme of the Industrial Disputes Act and unless and until such settlement has been terminated as envisaged under law, fresh dispute would not be maintainable. He referred to various provisions of the Industrial Disputes Act, particularly Sections 12, 18 and 19 thereof. He further submitted that wages as envisaged in the settlement dated 21.7.75 were paid not only to workmen who are parties to the said settlement but rest of the workmen also.

[4] On the other hand, the representative of the Union opposed the petition and contended that the Labour Court has examined the material on record and come to a finding of fact which require no interference. He submitted that nothing was produced before the Labour Court to demonstrate that other workmen were given benefits of the settlement of 1975.

[5] Having heard the arguments of both sides, we find that mainly on the ground of maintainability of the reference, the petitioner has challenged the award. As pointed out by the Counsel for the petitioner, under the Industrial Disputes Act, settlement arrived at during the course of conciliation proceedings are treated differently from those arrived at outside of the conciliation proceedings. Section 18(3) of the Industrial Disputes Act, specifically provides that the settlement arrived at in course of conciliation proceedings under the Act 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 it is recorded that they were summoned without proper cause, (c) heirs of employer referred to (a) and (b), and (d) all workmen who are employed in the establishment or part of the establishment to which the dispute relates on the date of the dispute and all persons who subsequently become employed in the establishment or part.

5.1 Sub-section (1) of Section 19 of the Industrial Disputes Act provides that settlement shall come into operation on such date as is agreed upon by the parties

to the dispute and if no date is agreed upon, on the date on which the memorandum of settlement is signed by the parties to the dispute. Sub-section (2) of Section 19 further provides that such settlement shall be binding for such period as agreed between the parties and if no such period is agreed for a period of 6 months from the date on which the settlement is signed and shall continue to be binding after the expiry of aforesaid period until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party to the settlement.

[6] From the combined reading of the above-mentioned provisions, it can be seen that a settlement which is arrived at during the course of conciliation proceedings binds not only the parties to the dispute but also all workmen employed at the time of dispute or who may be employed in future. Such agreement shall be valid for a period indicated in the agreement and thereafter upto two months after issuance of notice of termination.

[7] Counsel for the petitioner placed reliance on a decision of the Apex Court in the case of I.T.C. Ltd. Workers Welfare Association v. Management of ITC Ltd., 2002 AIR(SC) 937 wherein question of the binding effect of settlement arrived at during the course of conciliation proceedings was examined. Relying on previous decisions, the Apex Court concluded as follows:

> Admittedly, the settlement arrived at in the instant case was in the course of conciliation proceedings and, therefore, it carries a presumption that it is just and fair. It becomes binding on all the parties to the dispute as well as the other workmen in the establishment to which the dispute relates and all other persons who may be subsequently employed in that establishment. An individual employee cannot seek to wriggle out of the settlement merely because it does not suit him.
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> In the case of Barauni Refinary Pragatsheel Shramik Parishad v. Indian Oil Corporation Ltd., 1990 AIR(SC) 1801, it was observed as follows:
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> Settlements are divided into two categories, namely, (i) those arrived at outside the conciliation proceedings (Section 18(i) and (ii) those arrived at in the course of conciliation proceedings (Section 18(3)). A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement. But a settlement arrived at in the course of conciliation proceedings with a recognized majority union has extended application as it will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual

employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the union signing the settlement but also on the others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicatory authority.

In the present case, we find that the settlement dated 21.7.75 was admittedly arrived at during the course of conciliation proceedings. The settlement also envisaged that the same was to be in force for a period of three years from 1.4.75 and thereafter till the same is canceled/terminated. Admittedly, no termination notice has been issued cancelling or terminating the settlement. We also find that though there was some material before the Labour Court, without discussing the same at length, the Labour Court concluded that there was nothing on record to suggest that benefit of settlement was given to other workmen. The petitioner has, however, produced along with the additional affidavit material showing that such benefits were given to all the workmen regardless of the fact that whether they were parties to the settlement or not. In view of these facts, particularly when we find that the settlement arrived at before the Conciliation Officer during the course of conciliation proceedings has never been terminated and that there is evidence to show, prima facie, that other workmen also were given benefits flowing from such settlement, the reference itself was not competent. Under the circumstances, the conclusion arrived at by the Labour Court cannot be sustained.

[8] In the result, the award is set aside. It is, however, clarified that if any of the workmen have not been getting benefits of wages flowing from the said settlement, it will be open for them to seek recovery thereof from the petitioner in accordance with law. Subject to the above observations, the petition is allowed. Rule is made absolute.