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THE SIRSILK LTD. AND OTHERS

v.

GOVERNMENT OF ANDHRA PRADESH & ANOTHER

(P. B. GAJENDRAGADKAR, K. N. WANCHOO, and K. C. DAS GUPTA JJ.)

Industrial Dispute—Award sent to Government by the Tribunal—Settlement between parties thereafter—Government, if must publish the Award—Conflict between Award and settlement—Resolution of—Industrial disputes Act, 1947 (14 of 1947) ss. 2 (p),17, 18, 19.

The facts of the three appeals are similar and the questions of law involved are identical. Industrial disputes having arisen between the appellants and their workmen the disputes were referred for adjudication. After the Tribunal forwarded their Awards to the Government the parties in each dispute came to settlement. Thereafter letters were sent to the Government requesting them to withhold the publication of the Awards. The Government replied that under s. 17 of the Act it was mandatory for the Government to publish the Awards and they could not withhold publication. Thereupon writ petitions were filed before the High Court under Art. 226 of the Constitution praying that the Government might be directed to withhold the publication. The High Court held that since the provisions of s. 17 of the Act were mandatory it was not open to the High Court to issue writs as prayed for and rejected the petitions. The present appeals are by way of certificate granted by the High Court.

The main contentions in the appeals were that the provisions of s. 17 were not mandatory but were only directory and in the alternative that even if they were mandatory some *via media* had to be found in view of the conflict that would arise between an award published under s. 17 (1) and a settlement which was binding under s. 18 (1) and therefore where there was a settlement which was binding under s. 18 (1) it would be open to the Government not to publish the award. It was contended on behalf of the respondent that if the argument of the appellants was accepted it would create a difficult situation in as much as it would be possible for one party or the other to represent to the Government that the settlement had been arrived at

as a result of fraud, misrepresentation or undue influence and corruption etc.

Held that it is clear on a reading of s. 17 and s. 17A together that the intention behind s. 17 (1) is that a duty is cast on Government to publish the award within thirty days of its receipt and the provision for its publication is mandatory and not merely directory. When an agreement has been arrived at between the parties, though not in the course of conciliation proceedings, it becomes a settlement as per the definition under s. 2 (p) and s. 18 (1) lays down that such a settlement shall be binding on all the parties to it.

If a situation like the one in the present case arises which may lead to a conflict between a settlement under s. 18 (1) and an award binding under s. 18 (3) on publication, the only solution is to withhold the award from publication. This would not in any way affect the mandatory nature of the provisions in s. 17 (1) for the Government would ordinarily have to publish the award but for the special situation arising in such cases.

If any dispute arises as to the binding nature of the settlement on grounds of fraud or misrepresentation *etc.* that would be another industrial dispute, which the Government may refer for adjudication and if such a settlement is found not to be binding under s. 18 (1) of the Act it will always be open to the Government to publish the Award which it had withheld.

State of Bihar v. *D. N. Ganguly*, [1959] S. C. R. 1191, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 220, 423 and 424 of 1962.

Appeals from the judgment and order dated January 12, 1960 and August 19, 1960 of the Andhra Pradesh High Court, in Writ Appeals Nos. 120 and 57 of 1960.

S. K. Bose and *B. P. Maheshwari*, for the appellant (in C. A. No. 220 of 1962).

M. C. Setalvad, *S. K. Bose* and *Sardar Bahadur*, for the appellants (in C. As. Nos. 423 & 424 of 1962).

K. R. Chaudhuri and *P. D. Menon*, for respondent No. 1 (in all the appeals).

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1963. March 20. The judgment of the Court was delivered by

WANCHOO J.—These three appeals on certificates raise the same question and will be dealt with together. It will be enough to refer to the facts of one appeal only *i.e.*, No. 220, to understand the point arising for decision, the facts in the other appeals being similar.

Briefly the facts in appeal No. 220 are that an order referring certain disputes between the appellant and its workmen was made to the Industrial Tribunal, Andhra Pradesh on June 6, 1956. The tribunal sent its award to Government in September, 1957. Under s. 17 of the Industrial Disputes Act, No. XIV of 1947 (hereinafter referred to as the Act), the award has to be published by the appropriate government within a period of thirty days from the date of its receipt by the government in such manner as the government thinks fit. Before, however, the Government could publish the award under s. 17, the parties to the dispute which had been referred for adjudication came to a settlement and on October 1, 1957, a letter was written to Government signed jointly on behalf of the employer and the employees intimating that the dispute, which had been pending before the tribunal, had been settled and a request was made to Government not to publish the award. The Government, however, expressed its inability to withhold the publication of the award, the view taken by the Government being that s. 17 of the Act was mandatory and the Government was bound to publish the award. Thereupon the appellants filed writ petitions before the High Court under Art. 226 of the Constitution praying that the Government may be directed not to publish the award sent to it by the industrial tribunal. The High Court held that s. 17 was mandatory and it was not open to Government to withhold

publication of an award sent to it by an industrial tribunal. Therefore it was not open to the High Court to direct the Government not to publish the award when the law enjoined upon it to publish it. The writ petitions were therefore dismissed. There were then applications for certificates which were granted and that is how the matter has come up before us.

The main contention on behalf of the appellants before us is that s. 17 of the Act when it provides for the publication of an award is directory and not mandatory. In the alternative, it is contended that even if s. 17 is mandatory some *via media* has to be found in view of the conflict that would arise between an award published under s. 17 (1) and a settlement which is binding under s. 18 (1), and therefore where there is a settlement which is binding under s. 18 (1), it would be open to the Government not to publish the award in these special circumstances.

We are of opinion that the first contention on behalf of the appellants, namely, that the publication of the award under s. 17 (1) is directory cannot be accepted. Section 17 (1) lays down that every award shall within a period of thirty days from the date of its receipt by the appropriate government be published in such manner as the appropriate government thinks fit. The use of the word "shall" is a pointer to s. 17(1) being mandatory, though undoubtedly in certain circumstances the word "shall" used in a statute may be equal to the word "may". In the present case, however, it seems to us that when the word "shall" was used in s. 17(1) the intention was to give a mandate to Government to publish the award within the time fixed therein. This is enforced by the fact that sub-s. (2) of s. 17 provides that "the award published under sub-section (1) shall be final and shall not be called in question by any

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court in any manner whatsoever". Obviously when the legislature intended the award on publication to be final, it could not have intended that the Government concerned had the power to withhold publication of the award. Further s. 17A shows that whatever power the Government has in the matter of an award is specifically provided in that section, which allows the Government in certain circumstances to declare that the award shall not become enforceable on the expiry of thirty days from the date of its publication, which under s. 17 A is the date of the enforceability of the award. Section 17-A also envisages that the award must be published though the Government may declare in certain contingencies that it may not be enforceable. Subsection (2) of s. 17A also gives power to Government to make an order rejecting or modifying the award within ninety days from the date of its publication. It is clear therefore reading s. 17 and s. 17A together that the intention behind s. 17 (1) is that a duty is cast on Government to publish the award within thirty days of its receipt and the provision for its publication is mandatory and not merely directory.

This however does not end the matter, particularly after the amendment of the Act by Central Act XXXVI of 1956 by which s. 18(1) was introduced in the Act. Section 18 (1) provides that 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. "Settlement" is defined in s. 2 (p) as meaning a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the appropriate Government and the conciliation

officer. When such an agreement has been arrived at, though not in the course of conciliation proceedings, it becomes a settlement and s. 18 (1) lays down that such a settlement shall be binding on the parties thereto. Further s. 18 (3) provides that an award which has become enforceable shall be binding on all parties to the industrial dispute and others. Section 19 (1) provides that a settlement comes 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. In the present case the settlement that was arrived at between the parties to the dispute was signed on October 1, 1957, and as it had not fixed any date for its coming into force, it became operative from October 1, 1957 itself and was binding on the parties to the agreement who were also before the industrial tribunal and would be bound by the award after its publication.

The contention on behalf of the appellant in the alternative is this. It is said that the main purpose of the Act is to maintain peace between the parties in an industrial concern. Where therefore parties to an industrial dispute have reached a settlement which is binding under s. 18 (1), the dispute between them really comes to an end. In such a case it is urged that the settlement arrived at between the parties should be respected and industrial peace should not be allowed to be disturbed by the publication of the award which might be different from the settlement. There is no doubt that a settlement of the dispute between the parties themselves is to be preferred, where it can be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award, as it is arrived at by the free will of the parties and is a pointer to there being goodwill between them. Even though this may be so, we have still to reconcile the mandatory

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character of the provision contained in s. 17 (1) for the publication of the award to the equally mandatory character of the binding nature of the settlement arrived at between the parties as provided in s. 18 (1). Ordinarily there should be no difficulty about the matter, for if a settlement has been arrived at between the parties while the dispute is pending before the tribunal, the parties would file the settlement before the tribunal and the tribunal would make the award in accordance with the settlement. In *the State of Bihar* v. *D. N. Ganguly* (1), dealing with an argument urged before this Court that where a settlement has been arrived at between the parties, while an industrial dispute is pending before a tribunal, the only remedy for giving effect to such a settlement would be to cancel the reference, this Court observed that though the Act did not contain any provision specifically authorising the industrial tribunal to record a compromise and pass an award in its terms corresponding to the provisions of O. XXIII, r. 3 of the Code of Civil Procedure, it would be very unreasonable to assume that the industrial tribunal would insist upon dealing with the dispute on the merits even after it is informed that the dispute has been amicably settled between the parties, and there can be no doubt that if a dispute before a tribunal is ambicably settled, the tribunal would immediately agree to make an award in terms of the settlement between the parties. In that case this Court dealt with what would happen if a settlement was arrived at while the matter was pending before the tribunal. The difficulty arises in the present case because the proceedings before the tribunal had come to an end, and the tribunal had sent its award to Government before the settlement was arrived at on October 1, 1957. There is no provision in the Act dealing with such a situation just as there was no provision in the Act dealing with the situation which arose where the parties came

(1) [1959] S. C. R. 1191.

to an agreement while the dispute was pending before the tribunal. This Court held in *Ganguly's case* (1), that in such a situation the settlement or compromise would have to be filed before the tribunal and the tribunal would make an award thereupon in accordance with the settlement. Difficulty, however, arises when the matter has gone beyond the purview of the tribunal as in the present case. That difficulty in our opinion has to be resolved in order to avoid possible conflict between s. 18 (1) which makes the settlement arrived at between the parties otherwise than in the course of conciliation proceeding binding on the parties and the terms of an award which are binding under s. 18 (3) on publication and which may not be the same as the terms of the settlement binding under s. 18 (1). The only way in our view to resolve the possible conflict which would arise between a settlement which is binding under s. 18 (1) and an award which may become binding under s. 18 (3) on publication is to withhold the publication of the award once the Government has been informed jointly by the parties that a settlement binding under s. 18 (1) has been arrived at. It is true that s. 17 (1) is mandatory and ordinarily the Government has to publish an award sent to it by the tribunal; but where a situation like the one in the present cases arises which may lead to a conflict between a settlement under s. 18 (1) and an award binding under s. 18 (3) on publication, the only solution is to withhold the award from publication. This would not in our opinion in any way affect the mandatory nature of the provision in s. 17 (1), for the Government would ordinarily have to publish the award but for the special situation arising in such cases.

The matter may be looked at in another way. The reference to the tribunal is for the purpose of resolving the dispute that may have arisen between employers and their workmen. Where a settlement

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is arrived at between the parties to a dispute before the tribunal after the award has been submitted to Government but before its publication, there is in fact no dispute left to be resolved by the publication of the award. In such a case, the award sent to Government may very well be considered to have become infructuous and so the Government should refrain from publishing such an award because no dispute ramains to be resolved by it.

It is however urged that the view we have taken may create a difficulty inasmuch as it is possible for one party or the other to represent to the Government that the settlement has been arrived at as a result of fraud, misrepresentation or undue influence or that it is not binding as the workmen's representative had bartered away their interests for personal considerations. This difficulty, if it is a difficulty, will always be there even in a case where a settlement has been arrived at ordinarily between the parties and is binding under s. 18 (1), even though no dispute has been referred in that connection to a tribunal. Ordinarily, however, such difficulty should not arise at all, if we read ss. 2 (p), 18 (1) and 19 (1) of the Act together. Section 2 (p) lays down what a settlement is and it includes "a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the approprtiate government and the conciliation officer". Therefore the settlement has to be signed in the manner prescribed by the rules and a copy of it has to be sent to the Government and the conciliation officer. This should ordinarily ensure that the agreement has been arrived at without any of those defects to which we have referred above, if it is in accordance with the rules. Then s. 18 (1) provides that such a settlement would be binding between the parties and s. 19 (1) provides

that it shall come into force on the date it was signed or on the date on which it says that it shall come into force. Therefore as soon as an agreement is signed in the prescribed manner and a copy of it is sent to the Government and the conciliation officer it becomes binding at once on the parties to it and comes into operation on the date it is signed or on the date which might be mentioned in it for its coming into operation. In such a case there is no scope for any inquiry by Government as to the *bona fide* character of the settlement which becomes binding and comes into operation once it is signed in the manner provided in the rules and a copy is sent to the Government and the conciliation officer. The settlement having thus become binding and in many cases having already come into operation, there is no scope for any inquiry by the Government as to the *bona fides* of the settlement. In such a case in view of the possibility of conflict between the settlement in view of its binding nature under s. 18 (1) and an award which might become binding on publication under s. 18 (3), the proper course for the Government is to withhold the award from publication to avoid this conflict. If any dispute of the nature referred to above arises as to a settlement, that would be another industrial dispute, which the Government may refer for adjudication and if on such an adjudication the settlement is found not to be binding under s. 18 (1) of the Act it will always be open to the Government then to publish the award which it had withheld, though we do not think that such instances are likely to be anything but extremely rare. We are therefore of opinion that though s. 17 (1) is mandatory and the Government is bound to publish the award received by it from an industrial tribunal, the situation arising in a case like the present is of an exceptional nature and requires reconciliation between s. 18 (1) and s. 18 (3), and in such a situation the only way to reconcile the two provisions is to withhold the publication of the award, as a binding

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settlement has already come into force in order to avoid possible conflict between a binding settlement under s. 18 (1) and a binding award under s. 18 (3). In such a situation we are of opinion that the Government ought not to publish the award under s. 17 (1) and in cases where government is going to publish it, it can be directed not to publish the award in view of the binding settlement arrived at between the parties under s. 18 (1) with respect to the very matters which were the subject-matter of adjudication under the award. We therefore allow the appeals and direct the Government not to publish the awards sent to it by the industrial tribunal in these cases in view of the binding nature of the settlements arrived at between the parties under s. 18 (1) of the Act. In the circumstances we order the parties to bear their own costs.

Appeals allowed.

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HARINAGAR CANE FARM AND OTHERS

v.

STATE OF BIHAR AND OTHERS

(P. B. GAJENDRAGADKAR, K. N. WANCHOO and K. C. DAS GUPTA JJ.)

Industrial Dispute—Agricultural operation, if constitutes "industry"—Industrial Disputes Act, 1947 (14 of 1947) s. 2(j).

The appellant in appeal C. A. No. 31 of 1961 is a private limited company registered under the Indian Companies Act. It mainly produces sugarcane. It also produces wheat, paddy *etc.*, for sale in the market. Further it undertakes contract works for maintaining tram lines, weigh bridge, *etc.* The appellant in the other appeal has been purchased by Harinagar Sugar Mills Ltd. and since then is functioning as a department of the said Mills.