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NEW STANDARD ENGINEERING CO. LTD.

v.

N. L. ABHYANKAR AND ORS.

February 2, 1978

B [P. N. BHAGWATI, P. N. SHINGHAL AND JASWANT SINGH, JJ.]

Industrial Disputes Act 1947—*Sec.* 2(p) *S.* 18—*Settlement arrived at after the award and during pendency of Writ Petition of company in the High Court—Tests for determining reasonableness and fairness of settlement.*

The Government of Maharashtra referred to the Industrial Tribunal the dispute between the New Standard Engineering Co. Ltd. and its workmen for adjudication under section 10(1)(d) of the Industrial Disputes Act 1947. The C Tribunal gave its award in November, 1972, and it directed that the revised wage scales and the scheme of dearness allowance shall come into force with retrospective effect from 1st of January, 1968. The Company challenged the award in the High Court by a petition under Articles 226 and 227 of the Constitution which was fixed for hearing on 30-7-1973. A settlement was arrived at between the company and the Bhartiya Kamgar Sena (respondent No. 3) on 31-7-1973 but the application for adjournment was refused. The dictation of the judgment commenced on 31-7-1973 and was concluded on 1st August, 1973.

One of the points urged in the High Court was that the Company had arrived at the settlement and award may be made in terms of that settlement or a direction may be given to the Tribunal to consider whether the settlement was fair and reasonable. The High Court held that the alleged settlement was not a settlement under section 2(p) of the Act it was not open to it to take notice of it in proceedings under Articles 226 and 227 of the Constitution. It therefore thought it proper to dispose of the petition on merits rather than E leave it to uncertainty and inter-union rivalry which may lead to industrial unrest.

The Company filed an appeal in this Court by Special Leave. This Court sent the matter to the Tribunal for finding whether the settlement arrived at by the Company and respondent No. 3 was under section 2(p) of the Act, whether the settlement was entered into voluntarily and whether it was just and fair. The Tribunal found that out of 1328 workmen who were in service on 31-7-1973, 995 workmen had signed the settlement and had also accepted F their dues thereunder, and 242 workmen had only accepted their dues under the settlement by signing receipts though they did not sign the settlement.

The Counsel for respondent No. 2 contended that the settlement dated 31-7-1973 was not just and fair. The Counsel further argued that while under the award the increased rates were admissible from January, 1968, the settlement put that off to January, 1973 and was, therefore, unjust and unfair. It was also contended that by the settlement the amount of arrears payable was reduced from Rs 40 lakhs to Rs. 11.5 lakhs. On the other hand Counsel for G the Company pointed out with reference to the balance sheets that the Company had paid all its tax and other liabilities which were beyond recall and that during the period from 1968 to 1972 it had only a net surplus of Rs. 5.11 lakhs, and that the Company had agreed to pay about Rs. 11.56 lakhs in addition to the difference in dearness allowance amounting to Rs. 3.64 lakhs which had already been paid to the workmen. It was stated that the Company had exceeded its borrowing limit and it was not possible to pay more than what it had agreed to pay under the settlement.

H Allowing the appeal,

HELD : 1. Settlement of labour disputes by direct negotiation or settlement through collective bargaining is always to be referred for it is the best guarantee of industrial peace which is the aim of all legislation for settlement of

labour disputes. In order to bring about such a settlement more easily and to make it more workable and effective, it is no longer necessary under the law that the settlement should be confined to that arrived at in the course of a conciliation proceeding, but now includes by virtue of the definition in Section 2(p) of the Act, a written agreement between the employer and the workman arrived at otherwise than in the course of conciliation proceedings where such agreement has been signed by the parties in the prescribed manner and a copy thereof has been sent to the authorised officer. Rule 58(2) of the Industrial Disputes (Central) Rules, 1957, prescribes the manner of signing the settlement. Section 18(1) specifically states that a settlement arrived at by agreement between the employer and the workman otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement. [802 D-G]

Sirsilk Ltd. and Anr. v. *Government of Andhra Pradesh and Anr.*, [1963] II L.L.J. 647; followed.

Herbertsons Limited v. *Workmen of Herbertsons Ltd. and Ors.*, [1977] 2 S.C.R. 15, relied on.

Rajkamal Kala Mandir (P) Ltd. v. *Indian Motion Pictures Employees' Union and Ors.*, [1963] 1 L.L.J. 318 referred to.

2. Under the present settlement, the workmen have received the same wages and dearness allowance which were awarded to them by the Tribunal. They, therefore, lost nothing on that account. The stipulation about increased production had nothing to do with the period prior to January, 1973, nor was there any condition in the settlement according to which the benefits of the settlement were to be forefeited in case the workmen did not carry out the stipulation. [803 A-B, D]

3. The question of justness and fairness of a settlement should be examined with reference to the situation as it stood on the date on which it was arrived at i.e., on 31-7-1973. One of the ground of challenge to the award before the High Court was the contention that the Tribunal had not made a proper comparison of wages and the dearness allowance on industry-cum-region basis. The possibility of an adverse decision by the court could therefore operate as a positive force in favour of deliberate and careful effort by both the parties to settle their dispute through direct negotiation. It is that force which has brought about settlement under consideration. In the event of the success of the Company in the High Court the workmen were liable to refund the amounts which had already been paid to them. 995 workmen had signed the settlement and 242 workmen have accepted their dues under settlement. Bonafide of respondent No. 2 Union had not been challenged. [803 F, H, 804 A, B-E]

4. The Court directed that the award of the Tribunal be substituted by the settlement. [804 F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1177/73.

Appeal by Special Leave from the Judgment and Order dated 31st July, 1st August 1973 of the High Court, Bombay in Civil Application No. 335 of 1973.

F. N. Kaka, D. C. Shroff, I. N. Shroff and *H. S. Parihar* for the Appellant.

Y. S. Chitaley, P. H. Parekh, K. Vasudev, C. B. Singh and (*Mrs.*) *Manju Sharma*, for Respondents 2, 4 and 5.

S. J. Desmukh, K. L. Hathi and *P. C. Kapur* for Respondent No. 3.

A The Judgment of the Court was delivered by

SHINGHAL, J.—The Government of Maharashtra referred to the Industrial Tribunal, Bombay, the dispute between the New Standard Engineering Company Ltd. Bombay (referred to as the Company) and its workmen, for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947, hereinafter referred to as the Act. B The order of reference was made on August 9, 1966, and it stated all the demands of the workmen. The Tribunal give its award on November 29, 1972. It held, *inter alia*, that the revised wage scales and the scheme of dearness allowence shall come into force and the workmen shall be entitled to wages at the revised rates from January 1, 1968.

C The Company challenged the award in the High Court by a petition under articles 226 and 227 of the Constitution which was fixed for hearing on July 30, 1973. An application was made for an adjournment, but to no avail. The dictation of the judgment commenced on July 31, 1973 and was concluded on August 1, 1973. One of the points which was urged in the High Court was that the Company had arrived at a settlement with the Union known as the D Bhartiya Kamagar Sena (respondent No. 3) and an award may be made in terms of that settlement, or a direction may be given to the Tribunal to consider whether the settlement was fair and reasonable. It was brought to the notice of the High Court that some workers had already accepted the settlement and some more may accept it. The request for adjournment on that account, as well as the settlement, were opposed on behalf of the General Engineering Employees E Union (respondent No. 2) and some others. The High Court took notice of the fact that respondent No. 3 which claimed to represent "a substantial number of workmen" supported the settlement, but it held that the alleged settlement was "not a settlement under section 2(p)" of the Act and it was not open to it to "take notice of the said settlement in proceedings under Articles 226 and 227 of the Constitution." It therefore thought it proper to dispose of the peti- F tion on the merits, rather than leave it to uncertainty and inter-union rivalry, which might lead to industrial unrest. In that view of the matter, the High Court dismissed the petition on merits by its judgment dated 31-7-73/1-8-73. In the meantime, the memorandum of settlement was signed by and on behalf of the Company and respondent No. 3 (Bhartiya Kamgar Sena).

G The Company felt aggrieved against the judgment of the High Court and applied for special leave to appeal to this Court. Leave was granted on August 10, 1973 along with an order for stay of enforcement of the award on condition that the appellant paid the workers in accordance with the terms of the settlement of which copies were to be filed by counsel. Thereafter the "consent terms", duly signed, were filed by counsel for the parties and an order was H made on September 28, 1973, after notice to all concerned, that the matter would go back to the Industrial Tribunal "for findings and transmission thereof to this Court" along with a copy of the following consent terms,—

"The appellants and respondents 2 to 5 agree that the matter be sent down to Industrial Tribunal, Maharashtra, Bombay, for recording findings on the following issues:

(a) Whether the settlement dated 31st July 1973 between the appellant company and respondent No. 3 is a settlement under Section 2(p) of the Industrial Disputes Act, 1947.

(b) Whether the settlement was entered into voluntarily.

(c) How many workmen covered by the reference have signed and/or accepted the settlement.

(d) Whether the individual workmen who have signed and/or accepted the settlement have done so voluntarily.

(e) Whether the settlement is just and fair."

The Tribunal found issues Nos. (a), (b), (d) and (e) in the affirmative. As regards issue No. (c) it found that out of 1328 workmen who were in service on July 31, 1973, 995 workmen had signed the settlement and had also accepted their dues thereunder, and 242 workmen had only accepted their dues under the settlement by signing receipts though they had not signed the settlement. As regards the workmen who had left the Company between January 1, 1968 and July 31, 1973, the Tribunal found that 910 workmen had accepted their dues under the settlement by passing receipts for the same.

On receipt of the Tribunal's findings, an order was made by this Court on October 4, 1977 allowing the respondent to file a counter-affidavit and permitting the appellant to file its affidavit in reply. This is how the case has come up for disposal of the Company's appeal.

Counsel for respondent No. 2 has not challenged the findings of the Tribunal on issues Nos. (a), (b), (c) and (d). There is in fact no room for any controversy about these findings, which appear to be fully justified, and it is therefore not necessary to examine them here. The question remains whether the settlement dated July 31, 1973 was just and fair, for that was the subject matter of the remaining issue (e) on which, as has been stated, the Tribunal has returned a finding in the affirmative. In reaching that conclusion, the Tribunal has taken note of the facts that even under the settlement the workmen would receive 22 per cent additional emoluments, the award of the Tribunal would cast a burden of Rs. 40.06 lakhs on account of arrears which was not only unreasonable but also unbearable, the Company had all the same agreed to incur a recurring liability of Rs. 12 lakhs in the first year, Rs. 14 lakhs in the second year and Rs. 16 lakhs in the third year. and had already paid Rs. 15 lakhs. In arriving at its finding the Tribunal has drawn heavily on this Court's judgment in *Herbertsons Limited* v. *Workmen of Herbertsons Limited and others*(1). It has, in this connection, taken into consideration the

(1) [1977] 2 S.C.R. 15.

A factors which were likely to prevail with the workmen in accepting the terms of the settlement dated July 31, 1973, including the prospects of a protracted litigation, the risk of an adverse decision in the Company's pending appeal, the possibility of having to refund a part of what they had obtained during the intervening period, the distribution of Rs. 8,00,000/- instead of Rs. 5,00,000/- by way of ad hoc payment etc.

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Mr. Chitaley has argued that the Tribunal erred in taking the view that the award was likely to cast an unbearable burden of Rs. 40 lakhs on account of arrears, which the company had no capacity to pay. Our attention has, in this connection, been invited to some of the Annual Reports of the Company and the statements of the Chairman of the Board of Directors. It has therefore been pointed out that a settlement under which the sum which was payable as arrears was reduced from Rs. 40 lakhs and odd to about Rs. 11.50 lakhs cannot be said to be fair and reasonable as the workmen lost heavily because while the award revised the wage scales and the dearness allowance from January 1, 1968, the settlement put that off to January 1, 1973, and thereby unduly interfered with a matter which was within the Tribunal's discretion. Reference in this connection has been made to *Rajkamal Kalamandir (Private) Ltd.* v. *Indian Motion Pictures* v. *Employees' Union and others.*(1) It has also been pointed out that the workmen were required, under the settlement, to work harder and give increased production to the extent of ten per cent.

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Settlement of labour disputes by direct negotiation or settlement through collective bargaining is always to be preferred for, as is obvious, it is the best guarantee of industrial peace which is the aim of all legislation for the settlement of labour disputes. In order to bring about such a settlement more easily, and to make it more workable and effective, it is no longer necessary, under the law, that the settlement should be confined to that arrived at in the course of a conciliation proceeding, but now includes, by virtue of the definition in section 2(p) of the Act, a written agreement between the employer and the workmen arrived at otherwise than in the course of a conciliation proceeding where such agreement has been signed by the parties in the prescribed manner and a copy thereof has been sent to the authorised officers. Rule 58(2) of the Industrial Disputes (Central) Rules, 1957, prescribes the manner of signing the settlement and it is not in dispute before us that this requirement has been complied with. The other relevant provision is that contained in section 18(1) of the Act which specifically states that a settlement arrived at by agreement between the employer and the workmen otherwise than in th course of concilation proceedings shall be binding on the parties to the agreement. In fact it has clearly been held by this Court in *Sirsilk, Ltd., and another* v. *Government of Andhra Pradesh and another*(2) that as soon as an agreement is signed in the prescribed manner and a copy of it is sent to the officers concerned, it

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(1) [1963] 1 L.L.J. 318.
(2) [1963] II L.L.J. 647.

becomes binding on the parties and comes into operation on the date it is signed, or on the date mentioned in it for its coming into operation. We have therefore to examine the arguments of counsel for the parties with due regard to these provisions of the law.

It is not in dispute before us that under the settlement the workmen have received the same wages and dearness allowance which were awarded to them by the Tribunal. They therefore lost nothing on that account. Mr. Chitaley has however argued that while under the award the increased rates were admissible from January 1, 1968, the settlement put that off to January 1, 1973 and was therefore unjust and unfair. It is in this connection that the Tribunal's finding about the incapacity of the Company to shoulder the financial burden of paying all the arrears has been challenged before us.

Mr. Kaka has, on the other hand, taken us through the balance sheets of the Company for the purpose of showing that the Company had, as a fact, paid all its tax and other liabilities, which were beyond recall, and that during the period from 1968 to 1972 it had only a net surplus of Rs. 5.11 lakhs. It has been pointed out that, even so, the Company has agreed to pay about Rs. 11.56 lakhs, in addition to the difference in the dearness allowance amounting to Rs. 3.64 lakhs which has already been paid to the workmen. It has also been brought to notice that the Company has exceeded its borowing limit and is not in a position to pay more than what it has agreed to pay under the settlement. As regards the stipulation that the workmen will improve their efficiency and productivity so as to increase production at the rate of at least 10 per cent per annum, nothing worthwhile has been urged before us against the Tribunal's view that ground alone it is equally well settled that when once a prosecu-1, 1973 for which the arrears were claimed and were agreed to be paid in part. Moreover counsel for respondent No. 2 has not found it possible to refer to any condition in the settlement according to which its benefits were to be forfeited in case the workmen did not carry out the stipulation.

The question of justness and fairness of a settlement should, in a case like this, be examined with reference to the situation as it stood on the date on which it was arrived at i.e. on July 31, 1973. As has been stated, the award was made on November 29, 1972 but it was under challenge in the High Court on the Company's petition under articles 226 and 227 of the Constitution. It has been pointed out by Mr. Kaka, and has not been disputed by Mr. Chitaley, that one of the grounds of challenge was the contention that the Tribunal had not made a proper comparison of the wages and the dearness allowance on "industry-cum-region basis" even though it was enunciated by this Court in *Greaves Cotton & Company., Ltd, and others* v. *Their Workmen.*(1) It cannot therefore be said that the award was not at all in jeopardy at the time of the settlement.

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

(1) [1964] 5 S.C.R. 362.

effort by both parties to settle their dispute through direct negotiations. And we have no doubt that it is that force which has brought about the settlement under consideration. Then there is the further fact that, as has been stated by the Tribunal, the workmen were liable, in the event of the success of the Company, to a refund of the amounts which had already been paid to them on that understanding.

Moreover, as has been found by the Tribunal, out of 1328 workmen who were in the Company's service on July 31, 1973, 995 workmen have signed the settlement and have also accepted their dues thereunder, and 242 workmen have accepted their dues under the settlement by actually signing the receipts though they have not signed the settlement. It will also be recalled that 910 workmen who left the Company between January 1, 1968 and July 31, 1973 have also accepted their dues under the settlement. As has been stated, the settlement was made with the Bhartiya Kamgar Sena (respondent No. 3) which represented a very large majority of the workmen of the Company. It is a significant fact that the bona fides of that Union have not been challenged before us. There is therefore no reason why the Tribunal's finding that the settlement is just and fair should not be accepted.

It has to be remembered that the settlement was entered into on the morning of July 31, 1973, while the High Court delivered its judgment on August 1, 1973. It is therefore difficult to ignore the argument of Mr. Deshmukh that it was only when the workmen came to know that the award had been confirmed by the High Court, that they thought they had nothing to lose by challenging the settlement as unfair and unjust. It is that feeling which appears to have been exploited by respondent No. 2, because of inter-union rivalry. As it is, we are satisfied that the Tribunal's finding on issue No. (e) is also correct and does not call for interference.

The appeal is allowed, the impugned judgment of the High Court dated 31-7-1973/1-8-1973 is set aside and it is ordered that the award of the Tribunal shall be substituted by the settlement dated July 31, 1973, so that settement shall be the substituted award. In the circumstances of the case, however, we leave the parties to bear their own costs.

P.H.P. *Appeal allowed.*