

(1957) 12 AHC CK 0014

Allahabad High Court

Case No: Special Appeal No's. 219 and 220 of 1955

Tobacco Friends Union,  
Saharanpur

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Dec. 5, 1957**Acts Referred:**

- Contract Act, 1872 - Section 2
- Uttar Pradesh Industrial Disputes Act, 1947 - Section 18, 3

**Citation:** AIR 1958 All 688**Hon'ble Judges:** R. Dayal, J; A.P. Srivastava, J**Bench:** Division Bench**Advocate:** S.N. Misra, for the Appellant; Standing Counsel, for the Respondent**Final Decision:** Disposed Of

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**Judgement**

R. Dayal, J.

The workmen of the Imperial Tobacco Company of India Ltd., Saharanpur had two trade unions -- one under the name of the Cigarettes Workers Union, Saharanpur and the other under the name of Tobacco Friends Union, Saharanpur. There had been some disputes between the workmen and the company. The Cigarettes Workers Union applied to the Conciliation Officer on 29-12-1953 praying for his referring certain disputes between the workmen and the company to a Conciliation Board.

The Conciliation Officer constituted a Conciliation Board and an agreement was signed on behalf of the company and the Cigarettes Workers Union on 30-12-1953. The Chairman of the Conciliation Board reported the settlement to the local Government on 2-1-1954. The Government passed the following order on 14-6-1954:

"Whereas the Conciliation Board, Meerut constituted u/s 5(1) of Government Order No. 615(LL)/XVIII-7(LL)/51, dated 15-3-1951, has been successful in bringing about

an amicable settlement in the Industrial dispute between the concern known as Messrs. Imperial Tobacco Co., of India Ltd., Saharanpur and its workmen (C. B. Case No. 301 of 1953);

And whereas in the opinion of the Governor it is necessary so to do for the maintenance of public order and for maintaining employment to enforcement of settlement, dated 30-12-1953, contained in the report dated 2-1-1954.

Now, therefore, in exercise of the powers conferred by Section 3 read with Section 7 of the U. P. Industrial Disputes Act 1947 (U. P. Act No. 28 of 1947) the Governor is pleased to order as follows, namely:

The terms of the said settlement, contained in the Schedule annexed herewith, shall be and are hereby enforced and shall remain in force in respect of the matters covered by the said settlement and bind the said concern and its workmen for a period of one year in the first instance, with ..... effect from the date of the said settlement, subject to the following conditions:

(a) If any of the terms of the said settlement is more favourable to workmen than the advantage accruing to them under any legislation in force for the time being, the workmen shall be entitled to the benefits according to the terms of the said settlement; and

(b) If any of the terms of the said settlement is less favourable to workmen than the advantage accruing to them under any legislation in force for the time being, the workmen shall be entitled to get advantages to which they may be entitled under the law.

2. Any person, who contravenes or attempts to contravene any provisions of this order or abets any such contravention shall be liable on conviction to fine or to imprisonment not exceeding three years or both."

2. Some of the disputes which the agreement purported to settle were pending for decision before the U. P. State Industrial Tribunal, Allahabad. The State Government had referred them to that body at the instance of the appellant. The reference (No. 5 of 1954) consisted of five issues, four having been referred by the Government by an order dated 8-1-1954 and the fifth by an order dated 6-4-1954.

3. As a consequence of the order dated 14-6-1954 the Government decided to withdraw the reference in respect of four of the issues and by an order dated 12-7-1954 withdrew the reference in respect of four out of the five issues.

4. The Tobacco Friends Union filed Civil Misc. Writ No. G08 of 1954 on 16-7-1954 praying for the issue of a writ of prohibition against the State of Uttar Pradesh and the Labour Commissioner directing them not to withdraw the reference pending before the State Industrial Tribunal in respect of the dispute referred to it and restraining them from withdrawing the reference made to that Tribunal. It also

prayed for the issue of a writ of certiorari quashing the settlement dated 30-12-1953, which was proposed to be enforced against all the workmen and also ordering the opposite parties by a writ of mandamus not to enforce that settlement.

5. After the State Government had actually withdrawn four of the five issues which it had referred to the Industrial Tribunal by its order of 12-7-1954, the appellants filed a second writ petition (No. 762 of 1954) on 4-8-1954 praying for the issue of a writ of certiorari Quashing the aforesaid order dated 14-6-1954 and quashing the aforesaid Government Order dated 12-7-1954. It was further prayed that the opposite parties be directed by a writ of mandamus not to enforce on workmen other than those who are members of the Cigarettes Workers Union to observe and abide by the terms of the settlement dated 30-12-1953.

6. Both these writ petitions were rejected by the learned Single Judge and two Special Appeals have been filed against the orders of dismissal. Special Appeal No. 219 of 1955 deals with the dismissal of the Writ Petition No. 608 of 1955 and Special Appeal No. 220 of 1955 is against the order dismissing writ petition No. 762 of 1954.

7. The learned counsel for the appellant does not now press the appeal against the withdrawal of the issues that had been referred to the Industrial Tribunal.

8. The sole contention raised in the appeal is that the Government Order dated 14-6-1954 enforcing the settlement arrived at on 30-12-1953 is bad and cannot be enforced against those workmen of the company who are not members of the Cigarettes Workers Union as they were not parties to the proceedings before the Conciliation Board and had not expressed their assent to that agreement.

9. The reply of the learned counsel for the respondents is two-fold. He urges in the first place that the agreement which had been arrived at before the Conciliation Officer was an agreement between the workers and the company. The Cigarettes Workers Union represented the majority of the workers. In the law relating to Industrial Disputes there is a well recognised principle of collective bargaining.

According to it no individual worker should be allowed to create obstacles in the enforcement of agreements arrived at between the majority of workers and the employers. This principle has received statutory recognition, U is contended, in Section 18 of the Central Industrial Disputes Act. Acting on this principle, the Government, it is urged, was quite justified in enforcing the agreement arrived at between the company and the Cigarettes Workers Union against all the workers of the establishment including the members of the appellant Union.

The alternative contention is that the order of 14-6-1954 by which the agreement was enforced was in any case an order u/s 3 (b) of the U. P. Industrial Disputes Act, 1947 and as such could be enforced against all the workmen of the company even though the agreement on which the order was based may not have been binding on some of the workers because they were not parties to the Conciliation proceedings.

10. In connection with the first contention, the learned counsel for the respondents relied on paragraph 3 of the affidavit of Mr. C. P. Mc. Dougall dated 10-9-1954 where it was stated:

"That the total number of workmen employed in the Imperial Tobacco Company of India Ltd., Saharampur has fluctuated between 2080 and 2159 in the years 1953 and 1954. That an enquiry conducted by the Labour Inspector on 29-7-1953 had revealed that the Cigarettes Workers Union, Saharanpur had a total membership of 1325 and on the basis of this enquiry the Labour Commissioner U. P. in his capacity as Certifying Officer for Standing Orders, had declared the Cigarettes Workers Union Saharanpur as the representative Union of workmen under Rule 9 of the U. P. Industrial Employment (Standing Orders) Rules, 1946, a copy of which order was forwarded to the company on 6-10-1953."

He urged that the Cigarettes Workers Union represented the majority of workers employed in the company and that the agreement arrived at before the conciliation Officer had been accepted subsequently by many of the members of the Tobacco Friends Union also. Section 18 of the industrial Disputes Act (Central) Act No. XIV of 1947 on which reliance was placed by the learned counsel provides as follows:

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

(2) 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 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 (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 an employer, his heirs, successors Or assigns in respect of the establishment to which the dispute relates;

(d) 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."

11. Reference was also made to Clause (5) of the Government Order of 15-3-1951 issued by the State Government in exercise of its powers under the U. P. Industrial Disputes Act and it was contended that in accordance with that G. O. if there are

more trade unions than one in a trading establishment it is necessary to implead only that which represents the majority of workers. He therefore contended that it was not in law necessary that all the members of the Tobacco Friends Union should have been parties to the agreement arrived at before the Conciliation Officer. If it was acceptable to a majority of the workers of the Company it could be enforced by the Government against all the workers.

12. under the ordinary law of contract an agreement as such can be binding on and can be enforced only against those persons who are parties to it. All principles of the ordinary law of contract are however not always applicable to industrial disputes. In respect of such disputes the Legislature often intervenes and lays down different principles which must be applied. One of the well-known principles sometimes made applicable to industrial disputes is the principle of collective bargaining.

A number of workers acting together are considered to be in a better position to secure advantages and benefits for the workers as a class than individual workers. A few workers, it is contended should not be permitted to jeopardise the interest of the majority. If such enactment is made it has to be applied instead of the ordinary principles of contract. Such an enactment will be found in Section 18 of the Central Disputes Act.

According to Clause (d) of Sub-section (3) of It, if a settlement is arrived at in course of conciliation proceedings it is to be binding not only on the parties to the disputes or the parties summoned to appear in the proceedings but on all persons who are employed in the establishment to which the dispute relates on the date of the dispute and also on all persons who are subsequently employed in that establishment.

The principle of this Section is however not of universal application. It is really an exception of the general rule and can be relied upon if the Legislature prescribes that it should be applied. The agreement in question in the present case was admittedly not arrived at under the Central. Industrial Disputes Act and it is conceded that. It cannot be held to be enforceable against the appellant u/s 18 of that Act.

Though the U. P. Industrial Disputes Act has been framed on the model of the Central Act, a provision similar to Section 18 of the Central Act is conspicuous by its absence in the U. P. Act. The appellant can therefore contend that the U. P. Legislature intentionally avoided making the principle of Section 18 of the Central Act applicable to Conciliation proceedings conducted under its own Act. There being nothing in the U. P. Act corresponding to Section 18 of the Central Act, an agreement arrived at in conciliation proceedings under the former Act cannot be binding on persons who were not parties to it.

It was therefore not open to the State Government to enforce the agreement arrived at between the company and the Cigarettes Workers Union as such against

the members of the Tobacco Friends Union who were no parties to the agreement and had not taken any part in conciliation proceedings. This contention of the learned counsel for the appellant cannot be rejected as entirely without force. If the State Legislature itself did not consider it fit to recognise the principle by enacting in the U. P. Act a Clause similar to Section 18 of the Central Act, it is difficult to see how the courts can hold the principle to be applicable on any ground of general expediency.

13. AS has been pointed out by Mr. Justice Mehrotra the respondents can also not get any advantage from Clause (5) of the Government Order of 15-3-1951 issued by the State. That Clause does not deal with the question of enforcement of agreements at all. It neither lays down that an agreement arrived at in conciliation proceedings under the U. P. Act will be binding on the parties to the agreement alone, nor does it provide that such an agreement can be enforced" also against persons who are not parties to it. That Clause deals only with the persons who can be called and heard when conciliation proceedings are started by some of the workers of an organization only.

14. The appellant does not admit that the Cigarettes Workers union represents a majority of the Workers employed in the company and the learned counsel for the appellant referred us to paragraph 3 of the rejoinder affidavit of Mansingh filed on 21-10-1954 in this connection. He pointed out that the declaration made under Rule 9 of the U. P. Industrial Employment (Standing Order) Rules, 1956 even if it was made in favour of the Cigarettes Workers Union was made only for the limited purpose of Section 5 of the (Central Government) Industrial Employees (Standing order) Act, 1946 and the union cannot on that basis claim to represent the majority of the workers of the company for all purposes.

Learned counsel also contended that if some of the other workers had subsequently been made as a result of temptation, pressure or undue influence to accept some portion of the agreement arrived at before the Conciliation Officer, the fact could not be used for strengthening the validity of the agreement or its enforceability against the workers who were not actually parties to it. The question whether the majority of the workers were parties to the agreement or accepted it at a subsequent date thus becomes a disputed question of fact on which no final opinion can be expressed in this summary proceeding.

But even if it be conceded for the sake of argument that the members of the Cigarettes Workers Union exceeded in number the members of the Tobacco Friends Union, if the principle of Section 18 of the Central Industrial Disputes Act was not available, the agreement arrived at between some of the workers even if they constituted the majority could not as an agreement be enforced against those workers who were not parties to the conciliation proceedings.

15. It is on his alternative contention, therefore, that the learned counsel for the respondents principally relied. That contention is that even if the agreement was not enforceable against the appellant as an agreement it was open to the Government, if it considered the terms of the agreement to be reasonable and was of the opinion that it was necessary to enforce those terms against all the workers for any of the purposes mentioned in Section 3 of the U. P. Industrial Disputes Act to enforce them by an order under that section. That it is urged, was what the Government actually did.

16. This contention appears to us to be well founded. A perusal of the order of 14-6-1954 by which the Government sought to enforce the terms of the agreement shows that in the first paragraph reference was made to the success of the Conciliation Board in making the parties agree. The second paragraph expresses the opinion of the Governor about the necessity for the maintenance of public order and for maintaining employment to enforce the settlement dated 30-12-1953.

17. From paragraph 3 starts the operative part of the order. The order purports to be passed in exercise of the powers conferred u/s 3 read with Section 7 of the U. P. Industrial Disputes Act, 1947.

18. Paragraph 4 of the order provides that the terms of the settlement shall be enforced and would remain in force for a certain period with effect from the date of the settlement subject to two conditions mentioned in that paragraph. It is obvious that the Government decided to enforce the agreement, which it could even refuse to enforce, as it considered the agreement to be a fair and satisfactory solution of the disputes it purported to settle and that it was necessary for the objects contemplated by Section 3 of the Act, that is, for the maintenance of public order and for maintaining employment to enforce it.

It, therefore, invoked its power u/s 3 of the Act and it was in the exercise of that power that it modified the terms of the settlement in some respects. Of course it had the power not to enforce certain terms of the agreement at all; but to enforce the terms of the agreement only if the advantages which the workers could get under it were greater than the advantages they could get under any legislation in force amounted to modifying the terms of the settlement and not merely to not enforcing only a part of it

Such a modification could not be made in the simple exercise of the powers given u/s 7 of the Act. It was not necessary if the agreement was being enforced by virtue of the power given u/s 7 (2) of the Act to mention in the order enforcing it that that order was being passed in exercise of the powers given u/s 3 of the Act.

It is clear therefore, that, the State Government did mean to pass an independent order u/s 3 of the Act even though substantially the order followed the line of the agreement arrived at between the Company and the Cigarettes Workers Union. We are therefore of opinion, as already mentioned, that this order was passed u/s 3 of

the U. P. Industrial Disputes Act, 1947 and is therefore a good order except in one respect which we have to point out now.

19. An order u/s 3 (b) of the U. P. industrial Disputes Act can be only with respect to the period following the making of the order and cannot be a retrospective order. This order provided for the enforcement of the various terms from the date of the settlement that is, from 30-12-1953. No order could be passed by the State u/s 3 of the Act on 14-6-1954 enforcing the provisions of the order during the period between 30-12-1953 and 14-6-1954, also. The order is, therefore, a bad order so far as that period is concerned and could not operate in that period.

20. In view of the above, we dismiss Special Appeal No. 219 of 1955. We allow Special Appeal No. 220 of 1956 to this extent only that We direct that the Government Order dated 14-6-1954 was not in force prior to 14-6-1954. In other respects the Special Appeal No. 220 of 1955 is also dismissed. In the circumstances of these appeals we are of opinion that we should not make any order about costs. Therefore we order that the parties shall bear their own costs throughout these proceedings.