United Phosphorus Ltd. Vs Commissioner of Labour

Court: Gujarat High Court

Date of Decision: Sept. 22, 2014

Acts Referred: Constitution of India, 1950 â€" Article 226
Industrial Disputes Act, 1947 â€" Section 10, 18, 18(1), 19, 19(7)

Citation: (2015) 144 FLR 894 : (2015) 1 LLJ 190 : (2015) 1 SCT 808

Hon'ble Judges: K.S. Jhaveri, J; Abdullah Gulamahmed Uraizee, J

Bench: Division Bench

Advocate: Keyur Gandhi for Nanavati Associates, Advocates for the Appellant; M.S. Mansuri for Hina Desai, Advocates for the Respondent

Judgement

K.S. Jhaveri, J.
We have heard Mr. Keyur Gandhi, learned advocate appearing for Nanavati Advocates for the appellant and Mr. M.S.

Mansuri, learned advocate appearing with Ms. Hina Desai, learned advocate for the respondent. This intra-court Letters Patent Appeal has been

filed challenging the judgment and order dated 26.04.2010 passed by the learned Single Judge in Special Civil Application No. 11053 of 2008

whereby the learned Single Judge has dismissed the writ petition filed by the appellant and confirmed the order passed by the Labour Court.

2. The facts of the case as averred in the appeal are set out in a nutshell as under:

2.1. There were two unions operating in the appellant Company viz. Rajya General Kamdar Sangh (RGKS) and Rasayanik Kamdar Sangh (RKS)

and the appellant and RKS arrived at a settlement as per which a total number of 122 workmen out of 129 workmen agreed to abide by the terms

of the settlement contract and had been paid benefits as per the agreed terms of the settlement dated 14.09.2005. Thereafter with a view to start

fresh round of negotiations for the coming period, as the settlement period was about to lapse, RKS issued a notice under the provisions of Section

19 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") for termination of settlement dated 14.09.2005. The RKS tendered a

fresh charter of demands. During the pendency of the said fresh Charter of Demands, the Industrial Tribunal, Vadodara in Reference (IT) No. 10

of 2004 passed an order on 27.02.2007 holding that the settlement dated 14.09.2005 arrived at between the petitioner and RKS is just and fair.

Thereafter, on 01.03.2007 RGKS filed termination notice as well as fresh Charter of Demand before the Assistant Labour Commissioner,

Bharuch which was served on the appellant on 06.03.2007 and the appellant immediately vide letter dated 12.03.2007 replied that the RGKS had

no right under Section 19(7) of the Act to terminate the settlement dated 14.09.2005 as there was no majority of workmen in the Sangh.

2.2. Thereafter, the appellant was called upon by the Assistant Labour Commissioner, Bharuch for conciliation proceedings with RGKS which

was the union in Conciliation Case No. 9 of 2007. However, the conciliation proceedings failed between the appellant and RGKS and a report to

that effect was sent to Commissioner of Labour. During the pendency of the matter before the Commissioner of Labour, the appellant arrived at a

settlement with RKS which was recorded and signed by the parties. Thereafter, final settlement as per the provisions of Section 2(p) of the Act

was also arrived at between the appellant and RKS.

2.3. RGKS thereafter filed writ petition before this Court being Special Civil Application No. 6019 of 2008 whereby this Court directed the

Government to decide the failure report of conciliation proceedings pending before it within a month from the date of receipt of the order. The

concerned officer visited the appellant company and discussed the alleged unfair labour practice with them. The workers made statement that the

appellant company had not undertaken any unfair labour practice. The Commissioner, Gandhinagar on 31.05.2008 referred the matter to Industrial

Tribunal, Vadodara and the Tribunal issued a notice calling upon the concerned parties including the appellant to make representation in respect of

Charter of Demands as submitted in Reference (IT) No. 63 of 2008 which was challenged by the appellant by way of Special Civil Application

No. 11053 of 2008. The learned Single Judge after hearing the parties dismissed the writ petition. Hence the present appeal.

3. Mr. Keyur Gandhi, learned advocate appearing for the appellant contended that the learned Single Judge as well as the Tribunal erred in not

appreciating the fact that a settlement dated 17.03.2008 had already been arrived at between the appellant company and RKS wherein 98

workmen out of a total number of 110 workmen had accepted and signed the said settlement as per Section 2(p) of the Act read with Rule 62(4)

of the Industrial Disputes (Gujarat) Rules, 1966. He contended that the learned Single Judge failed to note that by 04.04.2008, four more

workmen had accepted the said settlement thereby leaving respondent no. 3 Union with only 8 workers as its members and that the said fact had

been brought to the notice of the Labour Commissioner vide letter dated 04.04.2008.

3.1. Mr. Gandhi contended that by 04.04.2008, four more workmen had signed and accepted the said settlement and thus 102 workmen out of

110 accepted the said settlement and received the benefit flowing from the same. Mr. Gandhi contended that so far as the alleged termination of

the workers is concerned, the same was done before the settlement was entered into and that only one worker was dismissed after the settlement.

3.2. Mr. Gandhi, in support of his submissions, has placed reliance on the following decisions:

(a) Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others, wherein paras 15 and 16 read as under:

15. Before we proceed further it is necessary to appreciate the implication of the order of this Court passed on December 19, 1974, set out

earlier. This order was passed after hearing the parties for some time when the appeal was first called for hearing on December 19, 1974. From

the recitals in the order it is apparent that the parties were prepared to abide by the settlement if the same was fair and just. We are not prepared

to accept the position, as urged by the 2nd respondent, that even if the settlement is binding on the parties executing the document, namely, the

company and the 3rd respondent representing a large majority of the workmen, since the same is not binding on the members of the Mumbai

Majdoor Sabha Union, howsoever small the number, under section 18(1) of the Industrial Disputes Act, the appeal should be heard on merits. On

the other hand, we take the view that after hearing the parties this Court was satisfied when it had called for a finding of the Tribunal that if the

settlement was fair and just it would allow the parties to be governed by the settlement substituting the award. The wording of the issue sent to the

Tribunal for a finding clearly shows that there was an onus on the 2nd respondent to show how many workers of the appellant were their members

upon whom they could clearly assert that the settlement was not binding under section 18(1) of the Industrial Disputes Act. It cannot be assumed

that the parties were not aware of the implications of section 18(1) of the Industrial Disputes Act when the Court passed the order of December

19, 1974. This Court would not have sent the case back only to decide the legal effect of section 18(1) of the Industrial Disputes Act. Since a

recognised and registered union had entered into a voluntary settlement this Court thought that if the same, were found to be just and fair that could

be allowed to be binding on all the workers even if a very small number of workers were not members of the majority union. It is only in that

context that after hearing the parties the case was remanded to the Tribunal for a finding on the particular issues set out above.

16. The numerical strength of the members of the 2nd respondent, who are workers of the company, would also have an important bearing as to

whether the settlement accepted by the majority of the workmen is to be considered as just and fair. In that view of the matter we are unable to

appreciate that the 2nd respondent did not choose it fit to produce evidence to show the actual number of the workers of the company having

membership of the 2nd respondent. It is rather odd that not a single worker of the company claimed before the Tribunal 21 to be a member of the

2nd respondent and to assert that the settlement was not fair and just. This is particularly so when all the workers of the company have accepted

the settlement and also received the arrears and emoluments in accordance with the same.

(b) Tata Engineering and Locomotive Company Limited Vs. Their Workmen, wherein the Apex Court in para 10 held as under:

10. The conclusion reached by the Tribunal that the settlement was not just and fair is again unsustainable. As earlier pointed out, the Tribunal

itself found that there was nothing wrong with the settlement in most of its aspects and all that was necessary was to marginally increase the

additional daily wage. We are clearly of the opinion that the approach adopted by the Tribunal in dealing with the matter was erroneous. If the

settlement had been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it

must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers (in this

case 71, i.e., 11.18 per cent) were not parties to it or refused to accept it, or because the Tribunal was of the opinion that the workers deserved

marginally higher emoluments than they themselves thought they did. A settlement cannot be weighed in any golden scales and the question whether

it is just and fair has to be answered on the basis of principles different from those which come into play when an 934 industrial dispute is under

adjudication. In this connection we cannot do better than quote extensively from Herbertson Limited v. Workmen of Herbertson Limited and

Others (supra), wherein GOSWAMI, J., speaking for the Court observed.

10. Besides, the settlement has to be considered in the light of the conditions that were in force at the time of the reference. It will not be correct

to judge the settlement merely in the light of the award which was pending appeal before this Court. So far as the parties are concerned there will

always be uncertainty with regard to the result of the litigation in a Court proceeding. When, therefore, negotiations take place which have to be

encouraged, particularly between labour and employer, in the interest of general peace and well being there is always give and take. Having regard

to the nature of the dispute, which was raised as far back as 1968, the very fact of the existence of a litigation with regard to the same matter which

was bound to take some time must have influenced both the parties to come to some settlement. The settlement has to be taken as a package deal

and when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so far as the award is

concerned, it cannot be said that the settlement as a whole is unfair and unjust.....

We should point out that there is some misconception about this aspect of the case. The question of adjudication has to be distinguished from a

voluntary settlement. It is true that this Court has laid down certain principles with regard to the fixation of dearness allowance and it may be even

shown that if the appeal is heard the said principles have been correctly followed in the award. That, however, will be no answer to the parties

agreeing to a lesser amount under certain given circumstances. By the settlement, labour has scored in some other aspects and will save all

unnecessary expenses in uncertain litigation. The settlement, therefore, cannot be judged on the touch-stone of the principles which are laid down

by this Court for adjudication.

There may be several factors that may influence parties to a settlement as a phased endeavour in the course of collective bargaining. Once

cordiality is established between the employer and labour in arriving at a settlement which operates well for the period that is in force, there is

always a likelihood of further advances in the shape of improved emoluments by voluntary settlement avoiding friction and unhealthy litigation. This

is the quintessence of settlement which courts and tribunals should endeavour to encourage. It is in that spirit the settlement has to be judged and

not by the yardstick adopted in scrutinising an award in adjudication. The Tribunal fell into an error in invoking the principles that should govern in

adjudicating a dispute regarding dearness allowance in judging whether the settlement was just and fair.

.....It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad.

Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be

slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole

as unfair or unjust. Even before this Court the 3rd respondent representing admittedly the large majority of the workmen has stood by this

settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that

all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the

employer and the 3rd respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated

above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the

course of collective bargaining have impelled us not to interfere with this settlement.

(c) State of Uttaranchal Vs. Jagpal Singh Tyagi, wherein para 4 reads as under:

4. We find that the approach of both the Labour Court and the High Court is clearly on wrong premises. If there was dispute on the question as

to whether the settlement was bona fide or was obtained by fraud, misrepresentation or concealment of facts, the same can only be the subject

matter of another industrial dispute. To substantiate the averments that such settlement could not have been arrived at, nothing was brought on

record by the respondent employee to show that there was any pressure exercised or that he was subjected to undue influence. There is also no

material to show that the settlement was intended to frustrate the order passed by the High Court. At no point of time, the respondent employee

raised any dispute as regards the fairness of the settlement. Having obtained the benefit, it was not open to him to turn down without justifiable

reasons to contend that the settlement was not fair.

(d) ANZ Grindlays Bank Ltd (now known as Standard Chartered Grindlays Bank Ltd.) Vs. Union of India (UOI) and Others, wherein paras 11,

12 and 13 read as under:

11. The principal issue, which requires consideration, is whether the Central Government was justified in making a reference to the Industrial

Tribunal in terms set out earlier. Section 2(k) of the Act defines ""industrial dispute"" and it means any dispute or difference between employers and

employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-

employment or the terms of employment or with the conditions of labour, of any person. The definition uses the word ""dispute"". The dictionary

meaning of the word ""dispute"" is: to contend any argument; argue for or against something asserted or maintained. In BLACK"S LAW

DICTIONARY the meaning of the word ""dispute"" is: a conflict or controversy, specially one that has given rise to a particular law suit. In

ADVANCE LAW LEXICON by P. RAMANATHA IYER the meaning given is: claim asserted by one party and denied by the other, be the

claim false or true; the term dispute in its wider sense may mean the ranglings or quarrels between the parties, one party asserting and the other

denying the liability. In Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others, , it was held that the term dispute

means a controversy having both positive and negative aspects. It postulates the assertion of a claim by one party and its denial by the other.

12. A plain reading of the reference made by the Central Government would show that it does not refer to any dispute or apprehended dispute

between the Bank and the Federation (second respondent). It does not refer to any demand or claim made by the Federation or alleged refusal

thereof by the Bank. In such circumstances, it is not possible to hold that on account of the settlement dated 18.8.1996 arrived at between the

Bank and the Association (third respondent), any dispute or apprehended dispute has come into existence between the Bank and the Federation

(second respondent). The action of the Bank in asking for a receipt from those employees, who are not members of the Association (third

respondent) but wanted to avail of the benefit of the settlement, again does not give rise to any kind of dispute between the Bank and the

Federation (second respondent). Thus, the reference made by the Central Government by the order dated 29.12.1997 for adjudication by the

Industrial Tribunal is wholly redundant and uncalled for.

13. There is another aspect of the matter, which deserves consideration. The settlement dated 18.8.1996 had already worked itself out and a fresh

settlement had been arrived at between the Bank and the Association (third respondent) on 16.11.1999. The members of the Association (third

respondent) and other employees, who availed of the benefit of the settlement, have received payments in terms thereof. Some of the employees

have already retired from service. Even if the settlement is set aside the Federation (second respondent) would not gain in any manner as no

enforceable award can be given in its favour, which may be capable of execution. On the contrary the appellant-Bank would be a big loser as it

will not only be very difficult but almost impossible for the Bank to recover the monetary benefits already paid to its employees under the

settlement. We are, therefore, of the opinion that the reference made by the Central Government is wholly uncalled for and deserves to be set

aside.

4. Mr. Mansuri, learned advocate appearing with Ms. Hina Desai, learned advocate for respondent No. 3 contended that the so called settlement

does not deal with the industrial dispute and demands raised by respondent No. 3 which covers the terms of reference of an order dated

31.05.2008 passed by the Government and that none of the demands contained in Reference No. 63 of 2008 is considered and settled in the

disputed settlement.

4.1. Mr. Mansuri contended that the settlement is said to have been signed on 17.03.2008 when conciliation proceedings in respect of the

demands of respondent No. 3 being Conciliation Case No. 9 of 2007 was pending but neither the appellant company nor the other Union

appeared and participated in conciliation proceedings at any date and time. He submitted that the award was passed only after writ petition was

filed before this Court in Special Civil Application No. 6019 of 2008.

4.2. Mr. Mansuri submitted that the union said to have signed the disputed settlement but has never proved its membership and representing

capacity before the Conciliation Officer and also joined as party in the main petition by appellant company.

4.3. Mr. Mansuri has drawn the attention of this Court to clause 12 of the affidavit-in-reply filed by respondent No. 1 at page 182 of the appeal

and submitted that the Deputy Labour Commissioner has filed the affidavit which is not in consonance with the records of the case.

4.4. Mr. Mansuri contended that the appellant has no cause of action to challenge the legality of the reference because the settlement on the basis

of which the reference is challenged is admittedly a private agreement and not a conciliation settlement. He submitted that it is also an admitted fact

that such settlement is not accepted by all the workers employed by the appellant and that there is no evidence that whoever accepted the same

have done so voluntarily or by free consent.

4.5. In this context Mr. Mansuri has relied upon a decision of the Apex Court in the case of the The Jhagrakhan Collieries (P) Ltd. Vs. Shri G.C.

Agrawal, Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur and Others, , wherein the Apex Court made the

following observations:

According to the scheme of s. 18, read with s. 2(d), an agreement, made otherwise than in the course of conciliation proceedings, to be a

settlement within the meaning of 879 the Act must be a written agreement signed in the manner prescribed by the Rules framed under the Act. As

rightly pointed out by Mr. Ramamurthy, learned Counsel for the Respondents an implied agreement by acquiescence, or conduct such as

acceptance of a benefit under an agreement in which the worker acquiescing or accepting the benefit was not a party being outside the purview of

the Act, is not binding on such a worker either under sub-section (1) or under sub-section (3) of s. 18. It follows, therefore, that even if 99% of the

workers have impliedly accepted the agreement arrived at on October 22, 1969, by drawing V.D.A., under it, it will not-whatever its effect under

the general law-put an end to the dispute before the Labour Court and make it functus officio under the Act.

4.6. Mr. Mansuri submitted that in the instant case the officer who conducted the conciliation proceedings was not duly appointed conciliation

officer and so the settlement could not be deemed to be a settlement arrived at in the course of conciliation proceedings. He submitted that even if

99% of the employees had taken advantage of provisions of the settlement, the settlement shall not be binding on other employees not parties to

the settlement.

4.7. Mr. Mansuri submitted that the order passed by the learned Single Judge refusing to go into the disputed question of facts as to if any binding

and valid settlement exists between the parties or not was justified and fair. He has relied upon the decision of this Court in the case of Aditya Birla

Insulators Vs. Commissioner of Labour, wherein it is held as under:

30. From the above observations, it appears that the Supreme Court partly accepted the submissions that for considering the question whether

there was sufficient material on record for making Reference evidence is required to be adduced. In such case, disputed question of facts and law

should not be adjudicated in a writ-application under Article 226 of the Constitution of India but in a case where no evidence is required to be

considered for examining the issue and by mere reading of the Reference, it appears that the Reference that has been made does not relate to any

industrial dispute, such question can be examined in proceedings under Article 226 of the Constitution.

31. In the case before us, for deciding the question whether there was a valid settlement binding between the parties or not requires giving of

evidence and thus, even according to the decision of the Supreme Court in the case of ANZ Grindlays Bank Ltd. v. Union of India and Others

(supra), this is not a fit case where the High Court, sitting in the writ jurisdiction should investigate such disputed question of fact.

32. In the case of Tata Chemicals (supra), the matter went before the Supreme Court out of a proceeding under Article 226 of the Constitution of

India where the subject-matter of such writ-application was an award dated February 21, 1977 of the Industrial Tribunal, Gujarat, and while

considering the merit of the award, the Supreme Court made an observation as regards the effect of settlement during conciliation or otherwise and

its binding nature. Therefore, in the case of Tata Chemicals (supra), the Supreme Court had no occasion to consider whether a Reference under

section 10 of the Act could be successfully challenged under Article 226 of the Constitution of India for the purpose of showing that there was no

existence of sufficient material before the authority making the Reference.

33. We, thus, find that in the case before us, the learned Single Judge rightly refused to enter into the said question and left it to the Industrial

Tribunal to decide the question of settlement as a preliminary issue.

4.8. In support of his submissions, Mr. Mansuri has also relied upon an unreported decision of this Court dated 28.03.2014 passed by a co-

ordinate Bench in Letters Patent Appeal No. 86 of 2014 with Civil Application No. 778 of 2014.

4.9. Mr. Mansuri has also relied upon another order dated 26.02.2013 passed by this Court (by one of us sitting as Single Judge: K.S. JHAVERI,

J) in Special Civil Application No. 670 of 2013 which was carried in appeal before the Apex Court and confirmed by the Apex Court.

5. Having heard learned advocates for both the sides and having gone through the evidence on record, it is pertinent to record that the matter has

been listed before this Court right from 12.02.2014 and this Court has till date given ample opportunities to both the sides to produce on record

the membership details of respondent No. 3 Union but no such membership details have been placed on record. Even today, Mr. Mansuri is not in

a position to establish that there is a single member except his contention that those members who were dismissed by the appellant company could

have been members of the union. Therefore, the factual scenario which emerges is that the issue in the present case is required to be decided qua a

union which has no membership.

5.1. The contention raised by Mr. Mansuri regarding non-issuance of writ of certiorari cannot be sustained inasmuch in the case of Letters Patent

Appeal No. 86 of 2014, this Court dismissed the writ petition observing that as the learned Single Judge has no issued any writ of certiorari in

favour of the appellant therein, the appeal could not be entertained. However on this point there is no final judgment by any competent court. It is

only a reference. Therefore, the decision relied upon by Mr. Mansuri cannot be held to be applicable on the facts of the present case. The same

shall fall on the administrative side.

5.2. Mr. Mansuri''s contention regarding award having been passed after filing of writ petition before this Court also cannot be accepted inasmuch

as while disposing of the writ petition no direction or opinion on merits has been issued or observed by the learned Single Judge other than to

decide the matter expeditiously. Therefore the decision of the learned Single Judge seems to be ex parte.

5.3. The contention raised by Mr. Mansuri regarding Deputy Labour Commissioner''s affidavit at page 182 is concerned, we are of the opinion

that in view of the finding by competent authority at page 173 and 174, the averments made in the affidavit do not seem to be in consonance which

ought to have been looked into by the authority before filing the affidavit. Nevertheless the fact remains that today even if there was a coercion

none of the workers have been brought on record before this Court. In fact a perusal of clause 16 of the settlement at page 123 shows that the

workers are agreeable to the terms of settlement and they are signatory to the settlement and shall not press any demand which is raised by

RGKM. It is also stated in clause 16 that the workmen have consented that they shall not press for making reference regarding demand notice by

RGKM. Therefore, we are of the opinion that the reference came into existence only with a view to restrain the workers from raising a second

demand. In view of the same we are of the opinion that the learned Single Judge committed an error in dismissing the writ petition.

In the premises aforesaid, appeal is allowed. The reference order and notice at Annexures A and B dated 31.05.2008 as well as 12.06.2006

respectively passed by the Industrial Tribunal, Vadodara are hereby quashed and set aside. The imposition of cost of Rs. 25000/- by the learned

Single Judge is also quashed and set aside.