(1989) 10 KL CK 0044

High Court Of Kerala

Case No: Original Petition No. 997 of 1998

Cochin Shipyard Limited		APPELLANT
	Vs	
Industrial Tribunal		RESPONDENT

Date of Decision: Oct. 27, 1989

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10, 12, 18(3), 19(2)

Citation: (1993) 3 LLJ 105

Hon'ble Judges: Radhakrishna Menon, J

Bench: Single Bench

Advocate: M. Pathrose Mathai, for the Appellant; M. Ramachandran, for the Respondent

Final Decision: Allowed

Judgement

Radhakrishna Menon, J.
The Cochin Shipyard Ltd. owned by Government of India is the petitioner.

2. Ext. P4 award of the first respondent is under challenge.

3. Facts relevant and requisite to decide the issue arising for consideration, briefly stated are: The terms and conditions of service relating to wages and other monetary and non-monetary benefits and entitlements of workmen used to be fixed by Long Term Settlements entered into periodically by the Management and the trade unions representing the workmen. The Long Term Settlement which is relevant here is Ext. PI settlement dated 31.8.1981. Ext. P1 provides that it shall remain in force for a period of four years from 1.4.1980. Ext. 1 discloses that it was in full and final settlement of all issues raised by the unions, and that during its pendency there shall be no demand involving financial or other liability for the management or for any further increase in wages or allowances or alterations of any terms and/or conditions of service of workmen. Ext.P1 however, did not preclude the unions from raising the question of payment of bonus under the Payment of Bonus Act, 1965. Clauses in Ext.P1 covering the above aspects are

clauses 37 and 38. They are extracted hereunder: -

"37. This Settlement will be in effect and in operation for a period of 4 years with effect from 1.4.1980. Notwithstanding the expiry of the period of validity of the settlement, it shall continue to be in effect thereafter unless it is terminated by giving due notice as provided in the Industrial Disputes Act, 1947.

38. This Settlement is in full and final settlement of all the issues raised by the Unions in the Charter of Demands referred to earlier. It is agreed that during the pendency of this settlement there shall be no demand involving financial or other liability or for any further increase in wages or allowances or alterations of any terms and/or conditions of service of workmen. This does not preclude the Unions from raising the question of payment of Bonus under the Bonus Act, 1965".

Before the expiry of the period during which the settlement was to be in force, the third respondent-Union made the demands discernible from their letters dated 14.1.1983, 31.10.1983 and 26.11.1983. The demands so made, according to the management, were in violation of Clause 38 of Ext.P1 settlement as they are all demands involving financial or other liabilities for the management or for further increase in wages or allowances or for alteration of terms and conditions of service. The management resisted the demands as they were, as already noted, in violation of Clause 38 of Ext.P1. With a view to coerce and compel the management to yield to the demands, the workmen resorted to agitation, stoppage of work, go-slow, strike etc. This resulted in the issues being referred for adjudication to the first respondent.

4. Respondents 2 and 3, as they failed to respond to the notice issued by the first respondent in the reference, were declared ex-parte. The application of the third respondent-Union to set aside the ex-parte order was allowed. The third respondent thereafter filed its claim statement making claims with reference to some of the issues. In its reply statement the management has categorically stated that the order of reference in respect of twenty seven issues referred for adjudication is incompetent and invalid as they are all covered and settled by Ext.P1 Long Term Settlement. It has further been stated that during the pendency and subsistence of the above binding settlement the unions have no right to make any demands involving financial or other liability or for any further increase in wages or allowances or alterations of any terms and/or conditions of service of workmen. The management accordingly submitted that the issue whether the reference is competent and valid shall be considered as a preliminary issue.

5. The preliminary issue however has been found against the management. The petitioner has challenged the above verdict of the first respondent.

6. The learned counsel for the petitioner argues that the first respondent has not considered this issue in the right perspective. The first respondent ought to have considered the validity of the above contention primarily with reference to Ext.P1

settlement.

7. Before we enter into the merits of the case I shall consider the above case of the petitioner first.

8. From the facts stated above it is clear that the settlement Ext.P1 is one arrived at through the active participation of the Conciliation Officer and hence binding on the parties. It is a settlement which satisfies the requirements prescribed under Sub-section 3 of Section 18. The workmen who are parties to the settlement therefore cannot make any demands during the pendency of the settlement if the said demands are in violation of the said settlement. It should in this connection be remembered that a conciliation proceedings which results in an agreement, can pertain not only to an existing dispute but also to a dispute which is apprehended. Why, it may be asked. The reason is this: The object of such long term settlements is to bring about industrial peace and there cannot be any industrial peace unless there is an agreement or understanding between the management and the workmen., May be that there is no specific provision in the Industrial Disputes Act which prohibits the workmen from raising an industrial dispute with regard to a matter which is the subject matter of a settlement u/s 12 read with Section 19(2). That does not mean that the object, the Legislature sought to achieve by enacting Sections 18(3) and 19(2) shall be ignored, while considering the competence of a reference in regard to the subject which is covered by the settlement. u/s 19(2) a settlement arrived at in the course of a conciliation shall be binding on the parties for such period as is agreed upon and if no such period is agreed upon, for a period of six months, from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of the intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement. The Legislature thus has evinced its intention to maintain industrial peace with regard to the subject-matter of the agreement during the period contemplated under the agreement. No industrial dispute with regard to the subject-matter of the settlement therefore can validly be raised unless it be that the Long Term Agreement has efficaciously been terminated. It is therefore clear to my mind that, neither any industrial dispute can be raised with regard to the matters covered by the settlement nor could that form the subject-matter of conciliation proceedings u/s 12 during the currency of the Long Term Settlement. I am fortified in this view by two decisions of the Management of Bangalore Woollen, Cotton and Silk Mills Co. Ltd. Vs. The Workmen and Another, and Aluminium Factory Workers'' Union v. Indian Aluminium Co. Ltd. 1962 (I) L.L.J. 210. See also Poona Mazdoor Sabha v. Dhutia 1965 (II) L.L.J. 319, Atlas Cycle Industries Ltd. Vs. Industrial Tribunal and Others, and British India Corporation Ltd. Vs. Industrial Tribunal and Another, The reference, made by the Government, in such circumstances will be declared incompetent and consequently the Industrial Tribunal will not have jurisdiction to

adjudicate upon the same. The position regarding the settlement wherein items of dispute which were not pressed and were withdrawn, however would not operate as a bar to a subsequent reference in respect of such items. (See Technological Institute of Textiles v. Its Workmen 1965 (II) L.LJ. 149 (S.C.). It is in this backdrop the preliminary point whether the reference is competent and valid requires to be considered. The fundamental aspect the petitioner should establish in this connection is that the issues referred for adjudication are issues which were given the quietus by the settlement Ext. P1. That the issues which are subject-matter of the reference have been given the quietus by the settlement is clear from the following findings of the Tribunal, discernible from Ext.P4 award.

"Most of the issues referred for adjudication were raised by the unions as early as in March, 1980. A charter of demands containing 103 demands were submitted by the employees'' union then and based on their charter of demands, a settlement was signed on 1.6.1981. By another settlement dated 30.8.1981 (Ext.P1) more issues were settled and it is stated therein that it was in full and final settlement of all the issues raised by the union in their charter of demands dated 4.3.1980....".

A reference in this connection to the following uncontroverted assertion by the petitioner in its reply statement before the Tribunal, Ext. P2, is profitable

"The Management submits that the order of reference in respect of 27 issues referred for adjudication is incompetent and invalid. The said issues are all covered and settled by the Long Term Conciliation Settlement dated 31.8.1981 between the Management and the Unions who are parties to the above dispute before the Regional Joint Labour Commissioner, Ernakulam on 31.8.1981. The said settlement was remaining in force for a period of 4 years from 1.4.1980. During the currency and subsistence of the above binding settlement the Cochin Shipyard Employees Union by their letter dated 31.10.1983 raised 20 issues and thereafter by their letter dated 26.11.1983 raised 4 issues and further 3 more issues were added to their demands by another letter dated 14.1.1983. The said demands made by the Unions were clearly in violation of and contrary to the binding conciliation settlement which was remaining in force and subsisting at that time.. .In the face of the above terms of the binding conciliation settlement (namely Clauses 37 and 38 already extracted elsewhere in this judgment) it was not permissible for the Unions to raise the issues made by them in the charter of demands aforementioned".

These statements have not been controverted by the unions and hence uncontroverted. These facts, therefore, are admitted facts. If that be the position it cannot be disputed that the issues referred for adjudication are issues which have been finally settled between the parties as early as on 31.8.1981. Going by the dictum of the Supreme Court, the reference is incompetent.

9. This preliminary issue can be viewed from another angle. Assuming that the issues referred for adjudication are not covered by Ext.P1 settlement, even then, the

Tribunal should have passed an award in terms of Ext.P3 settlement. How that is possible, is not unlikely to be asked. The answer in my view depends upon the facts of each case. What then are the relevant facts, we should enquire into here. During the currency of Ext.P1 settlement the very disputes which were given the quietus by Ext.P1 settlement were raised by the unions; see their letters dated 31.10.1983, 20.11.1983 and 14.1.1983. These issues were referred for adjudication. They are the subject-matter of the award. I shall in this connection extract the following finding of the Tribunal:

"It is a fact that all the issues referred for adjudication were raised by the Union in their charter of demands dated 28.9.1983 and 31.10.1983"

These issues as also other issues raised by the unions were the subject-matter of conciliation which preceded Ext.P3 settlement. That at the final conciliation conference in respect of the above charter of demands held by the Joint Labour Commissioner in his office on 10.12.1985 all the issues raised by them as well as outstanding issues were fully and finally settled, cannot be disputed. It has been so stated in Ext.P3; and for easy reference I shall extract the relevant passage from Ext.P3.

"At the final conciliation conference held by the Regional Joint Labour Commissioner, in his office on 12.10.1985, the following settlement was reached between the Unions and the Management, in full and final settlement of all the issues raised by them as well as outstanding between the workmen and the Management"".

It has further been stated in Ext.P3 that "Ext.P3 settlement dated 12.10.1985 is in full and final settlement of all the demands and issues raised by the unions in the charter of demands referred to earlier". The charter of demands admittedly takes in its fold the issues referred for adjudication and considered by the Tribunal also. It is therefore clear that all issues including the outstanding issues and covered by the charter of demands of the year 1983 have been settled between the parties in the presence of the conciliation officer (Ext. P3). That means the parties are concluded by Ext.P3 in so far as the disputes raised in the charter of demands made in 1983, are concerned. The finding of the Tribunal that "when long term settlement was signed (Ext. P3) no mention was made about these issues pending for adjudication before the Tribunal '' is not sustainable and therefore liable to be vacated. It should in this connection be observed that the reference in Ext. P3 to outstanding issues can refer only to the issues referred for adjudication. The issues referred for adjudication also must therefore be held to have been amicably settled between the parties by Ext.P3 long term settlement. It is relevant in this context to take note of the above quoted principle that the primary object of the Industrial Disputes Act is to maintain industrial peace and harmony and it is with that in view amicable settlement of industrial disputes are encouraged. If that be so there cannot be any doubt that if a dispute is amicably settled, the Tribunal before which the issues are

pending adjudication is bound to make an award in terms of settlement instead of deciding them de hors the settlement. I am fortified in this view by a decision of the Supreme Court in The State of Bihar Vs. D.N. Ganguly and Others, and another decision in The Sirsilk Ltd. and Others Vs. Government of Andhra Pradesh and Another,

In Ganguli''s case the Supreme Court has observed thus:-

"We have already indicated that amicable settlements of industrial disputes which generally lead to industrial peace and armony are the primary objects of this Act. Settlements reached before the conciliation officers or boards are specifically dealt with by Sections 12(2) and 13(3) and the same are made binding u/s 18. There can, therefore, be no doubt that if an industrial dispute before a tribunal is amicably settled, the tribunal would immediately agree to make an award in terms of the settlement between the parties".

The preliminary issue therefore is answered in favour of the petitioner. The award accordingly is liable to be set aside.

10. Coming to the merits of the case. Although 27 issues were referred for adjudication, the unions did not press 15 issues. The Tribunal therefore was called upon to consider and dispose of only 12 issues. Of these 12 issues 9 were answered in favour of the employees. Of the 9 issues the issue pertaining to ''abolition of contract in shipwright section'' the learned counsel for the petitioner submits, cannot be the subject matter of a reference as it is beyond the jurisdiction of the Industrial Tribunal, in view of the special enactment governing the matter namely The Contract Labour (Regulation and Abolition) Act, 1970. That is the position in law has been declared by the Supreme Court. See the decision in Vegoils Private Limited Vs. The Workmen, Construing this enactment the Supreme Court has observed that, "it may be that in future if a reference is proposed to be made or actually made by the authorities concerned regarding the abolition of contract labour for adjudication by the Industrial Tribunal, it may be open to the persons concerned to resist the reference on the ground that the jurisdiction to consider such matters and prohibiting contract labour is now vested with the appropriate Government under the Central Act". It is so, because with effect from 10.2.1971 the jurisdiction to decide matters connected with contract labour is vested in the appropriate Government (See Section 10 of the said Act). The Industrial Tribunal, therefore, has no jurisdiction to decide this issue. Though the Tribunal Considered the issue it has not issued any direction to absorb these apprentices. Yet there is the observation that ''there is no justification in not absorbing the said workmen''. This observation is unwarranted in view of the position in law that the labour laws are not applicable to the said apprentices in view of Sections 18 and 22 of the Apprentices Act. This is the view expressed by a Division Bench of this Court. See Balakrishnan Nair v. K.L.D. & M.M.B. 1983 KLJ 216 and Bhaskaran Vs. Kerala State Electricity Board,

11. Regarding the other 8 issues the decision of the Tribunal would definitely show that the Tribunal has assumed the role of the management. In other words decisions, the management alone could take, are seen taken by the Tribunal. This is not warranted in, view of the well established principle enunciated by the Supreme Court in various decisions. A question would arise in this context: What are the functions of the management which are unaffected by the labour laws? Pithily stated they are: the right to decide the strength of its labour force to carry out efficiently the working of its undertaking: the right to reorganise the business and retrench surplus labour because no employer is expected to shoulder the burden of such ''economic dead weight''. See Parry and Co. Ltd. Vs. P.C. Pal and Others, and Workmen of Subong Tea Estate Vs. The Outgoing Management of Subong Tea Estate and Another, It should in this connection be remembered that if the adoption of the reorganised scheme was for the reason of economy and convenience, the fact that the implementation of the said scheme would lead to the discharge of some of the employees would have no material bearing on the question as to whether the reorganisation scheme was adopted by the employer bona fide or not. See D. Macropollo and Co. (Private) Ltd. Vs. D. Macropollo and Co. (Private) Ltd. Employees'' Union and Others, Discharge or retrenchment in such circumstances however can be interfered with by the Tribunal if it is established that the same was resorted to as a means to victimise the workmen; to create new posts and abolish existing posts taking into account the financial position of the establishment; to transfer workmen in the expediency of administration; to allot special work taking into account the ability/capacity of the worker to do the same. See judgment in O.P. Nos. 916 and 1390 of 1984. Such examples cannot exhaustively be stated. They therefore can be treated only as illustrative. It is axiomatic that while settling an industrial dispute with a view to establish peace in the industry, the Tribunal shall not lose sight of the interest of the industry.

12. The decisions and findings of the Tribunal on these eight issues considered in the light of the above principle are erroneous. The Tribunal has no power to create new posts against the demand for promotions. Similarly, it has no power to order transfer of employees. The direction in regard to transfer of. electricians to the repairing section therefore is not sustainable. It should in this connection be borne in mind that the management may not be able to complete the repair and deliver the ship within the stipulated period unless the electricians/technicians allotted to do the repair work are efficient and competent. Whether a particular worker is competent or not cannot be decided by the Tribunal. Only the management can say who is who in the department. The directions to create new posts and also to start a non-vegetarian canteen would bring about additional financial burden to the company, which has been incurring heavy loss since the year 1975-76. By 1983-84 the accumulated loss comes to Rs. 3309.32 lakhs. The decisions and findings on these issues are therefore liable to be vacated.

13. The above position notwithstanding the learned counsel for the unions relying on a decision of the Supreme Court in Dishergarh Power Supply Co. Ltd., Calcutta and Another Vs. Workmen of Dishergarh Power Supply Co. Ltd. and Others, submitted that it was certainly open to an Industrial Tribunal in an appropriate case to impose new obligations on the parties before it or modify contracts in the interest of industrial peace or give awards which may have the effect of extending agreement or making new one. This argument no doubt is appearing because as observed by the Supreme Court in The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees'' Union, Delhi, the Tribunal can confer rights and privileges on either party which it considers reasonable and proper though they may not be within the terms or any existing agreement. This however does not mean that the Tribunal can do anything and everything when dealing with the issues referred for adjudication. This power as observed by the Supreme Court, see The New Maneck Chowk Spinning and Weaving Co. Ltd., Ahmedabad and Others Vs. The Textile Labour Association, Ahmedabad, is conditioned by the subject-matter with which it is dealing and also by the existing industrial law. It is not therefore open to the Tribunal while dealing with a particular matter before it to discard the industrial law relating to that matter and the law declared by the Supreme Court in regard to the said subject matter. See also Dishergarh Power Supply Company''s case, The above argument of the learned counsel therefore is rejected.

The award, for the reasons stated above, is liable to be set aside. I accordingly set aside the same.

The O.P. is allowed. No costs.