(1977) 10 SC CK 0014

Supreme Court of India

Case No: Civil Appeal No. 1649 of 1975

B. Shah — APPELLANT

Vs

Presiding Officer,
Labour Court,
Coimbatore and Others — RESPONDENT

Date of Decision: Oct. 12, 1977

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10, 17A, 19, 2
- Transfer of Property Act, 1882 - Section 106

Citation: AIR 1978 SC 12 : (1977) 35 FLR 414 : (1977) LabIC 1847 : (1978) 1 LLJ 29 : (1977) 4 SCC 384 : (1978) 1 SCR 701 : (1977) 9 UJ 699

Hon'ble Judges: V. R. Krishna Iyer, J; Jaswant Singh, J

Bench: Division Bench

Advocate: G.B. Pai, P.K. Kurian, D.K. Mishra and K.J. John, for the Appellant; K.N. Bhat, (Amicus Curiae), for the Respondent

Final Decision: Dismissed

Judgement

P.K. Goswami, J.
The short but important question which arises for decision in this appeal by special leave turns on the interpretation of Section 19(2) of the Industrial Disputes Act, 1947 (briefly the Act). Does law require that notice of termination u/s 19(2) has to be given only after the date of expiry of a settlement ? That is the question. We are informed that there is no direct authority of this Court on this point.

2. There was a settlement between the appellant, M/s. Shukla Manseta Industries Private Limited (hereinafter to be described as the employer) and their workmen on July 6, 1970. The settlement came into force from July 6, 1970 and was to remain in force for a period of three years, that is, till 5th July, 1973. The workmen through their union (Shukla Manseta Mazdoor Sangh) gave notice to the employer on May 6, 1973, terminating the

settlement after the expiry of the period of two months from the date of the notice. Thus under the terms of the notice the settlement would also have stood terminated at the instance of the workmen on July 5, 1973, which was also the date of the expiry of the settlement under the agreed terms.

3. The workmen thereafter raised certain demands on August 1, 1973 and the State Government, in due course, referred the dispute u/s 10(1)(d) of the Act to the Industrial Tribunal by an order dated June 25, 1974.

4. The employer took a preliminary objection before the Tribunal that the reference was incompetent and invalid in view of the fact that there was no legal and valid termination of the settlement in accordance with the provisions of Section 19(2) of the Act. The workmen resisted the claim. The Tribunal over-ruled the preliminary objection and held that the notice was valid and the reference was competent. It is against the above order of the Tribunal that the employer has come to this Court by special leave.

5. We may immediately turn our attention to Section 19 of the Act which reads as follows:-

"19. (1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties 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 an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

(3) An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable u/s 17A:

Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit:

Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

(4) x x x x

(5) Nothing contained in Sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any

continuing obligation on the parties bound by the award.

(6) Notwithstanding the expiry of the period of operation under Sub-section (3), the award shall continue to, be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

(7) No notice given under Sub-section (2) or Sub-section (6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be".

6. We may also note the definition of settlement given u/s 2(p) of the Act:

"2. (p) ''Settlement'' means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer".

7. There is no dispute that the settlement in question comes within the purview of Section 2(p) of the Act.

8. Under the provisions of Section 19(2) it is clear that a settlement shall be binding for such period as is agreed upon by the parties and if there is no period mentioned in the agreement, for a period of six months from the date on which the settlement is signed by the parties. With regard to the period of operation of the settlement, Section 19(2) confers a statutory continuity of the settlement even after the expiry of the period agreed upon until the expiry of two months from the date on which a written notice of the intention to terminate the settlement is given by one party to the other. It is, therefore, clear that when a period is fixed in a settlement, the settlement remains in operation for the entire period and also thereafter until one or the other party gives written intimation of the intention to terminate the settlement and until expiry of two months from the date of such intimation.

9. The object of the above provision u/s 19(2) is to ensure that once a settlement is arrived at there prevails peace, accord and cordiality between the parties during the period agreed upon and if the settlement does not require to be altered for some reason or the other the same climate prevails by extension of the settlement by operation of law. Section 19 is not a dead end freezing all manner of aspirations of labour or even, may be, sometime, hardship suffered by the employer on account of a settlement. There is an option given to either party to terminate the settlement by a written intimation after the expiry of two months from the date of such notice. This is in accord with the policy of settlement of industrial disputes which is the principal object underlying the provisions of the Act.

10. Settlement between employers and workmen, if not duly terminated, will operate as inviolable conditions of service of workmen. Such settlements are only step-ups in labour''s progressive ascent to the goal of their ultimate Ideal, namely, a living wage with realisation of other aspirations including partnership with employer. How soon that goal will be reached will depend upon so many factors and other imponderables in the process of the nation''s achievement, with cooperation from ail sectors, public and private, but each party being always alive to the larger national interest which includes thriving of the industry of which labour is an integral pArticle

11. The policy of the Act is to ban agitations over the matters covered by a settlement or by an award during the period specified u/s 19(2) and Section 19(6) respectively. To avoid uncertainty and speculation Section 19 prescribed a terminus a quo and a terminus ad quern. If in a settlement there is no time limit agreed upon between the parties the period of operation is a space of six months from the date of signing of the settlement and will also last until the expiry of two months from the date of receipt of the notice of termination of the settlement. If the period is fixed it commences from the date as specified in the settlement and will theoretically end as agreed upon but shall continue to operate under the law until the expiry of the requisite period of two months by a clear written notice.

12. An award u/s 19(3) of the Act has a longer period of operation, to start with, namely, one year from the date of the commencement of the award, which is on the expiry of 30 days from the date of publication of the award by the appropriate Government. As in the case of a settlement so also u/s 19(6) the award continues to operate governing the condition''s of service until the expiry of two months from the date of receipt of notice of termination of the award. Under the two provisos to Sub-section (3) of Section 19 Government has the option to reduce or extend the period of operation of an award. This will be, however, always subject to Sub-section (5) of Section 19.

13. Notice u/s 19(2) or u/s 19(6) is only for intimation of an intention to terminate a settlement or an award respectively. There is no legal impediment to give advance intimation of the aforesaid intention provided the contractual or statutory period of settlement is not thereby affected or curtailed.

14. It is submitted by Mr. Shroff on behalf of the appellant that the view taken by the Tribunal is erroneous and he further submits that there is a decision of another Industrial Tribunal in Maharashtra in his support against the impugned view. He has also referred to two decisions of this Court and some decisions of the High Courts but admits that none of these is directly to the point which is raised before us.

15. In 286769 oollen, Cotton & Silk Mills Co. Ltd. v. The Workmen and Anr., this Court has held that when there is a subsisting ''award binding on the parties the Tribunal has no jurisdiction to consider the same points in a fresh reference. In that case the earlier award had not been terminated and, therefore, the reference was held by this Court to be

incompetent. That was a case in which there was not only a settlement between the parties but also an earlier award dealing, inter alia, with some common items of dispute. While the settlement was terminated after its expiry by the union, the earlier award which also had disposed of some of the items of the dispute which were raised but abandoned as a package deal in the subsequent settlement had not been terminated in accordance with law. Indeed there was an attempt in that case to show that the earlier award had been terminated by a letter dated June 26, 1961 and if so, the award would have expired on August 26, 1961. Since, however, the settlement disposing of common points of dispute was terminated by a letter dated August 14, 1961 and thereby the settlement stood terminated only on October 14, 1961, the termination of the award by a letter dated June 26, 1961, during the operation of the settlement was held to be invalid. The facts of Bangalore Woollen, Cotton & Silk Mills" case (supra) are, therefore, entirely different from those with which we are concerned in this appeal.

16. The other decision namely, the 292917 is also not directly to the point raised in this case.

17. Our attention is drawn to a decision of the Calcutta High Court in the 22020 wherefrom reading paragraph 13 in the decision, Mr. Shroff sought to derive some assistance. We find that although the agreement, there, was statutorily continuing after its expiry on August 26, 1952, notice for terminating the agreement was given on September 6, 1952 and the High Court rightly accepted the notice as valid. The High Court also rightly disagreed with the views of the Labour Appellate Tribunal in India Reconstruction Corporation Limited (1953) Labour Appeal Cases 563 (Cal.) that an agreement with a fixed period expired by efflux of the period and was not statutorily continued. "The period aforesaid" in Section 19(2) will include not only the contractual period but also the statutory period of six months. This decision, therefore, lends no assistance to Mr. Shroff.

18. Mr. Shroff also relied upon a decision of the Andhra Pradesh High Court in 945356 which does not at all lend assistance to his submission. Although the facts are not very clear from the report we find, the High Court has observed that-

"obviously the management was not within its rights in terminating and unilaterally repudiating Ex. A. 1" (the agreement).

19. Section 19(2) does not entitle a party to a settlement to repudiate the settlement while the same is in operation. Giving advance notice within the ambit of the law is not repudiation of the settlement.

20. Mr. Shroff next submits that Section 19(2) should be given the same meaning as Section 19(6) since both these provisions are on the same subject dealing with the period of operation of settlement and award respectively. It is submitted that so far as an award is concerned under the second proviso to Sub-section (3) of Section 19, the appropriate Government may extend the period of operation by any period not exceeding one year at

a time subject to a total period of operation not exceeding three years from the date on which it comes into operation. According to counsel since there is a power in the Government to extend the period of the award a notice of termination prior to the date of expiry of the award cannot be contemplated under the law and since this is the position regarding an award, a settlement cannot be treated differently. We are unable to accede to this submission. Even if an advance notice is given in the case of an award, provided the period of two months expires on the usual expiry of the award permitted by law and Government in exercise of its power extends the award in a given case, such a notice would be infructuous and inoperative under the law. The extension of the award by the Government in exercise of statutory power would prevail upon the action of the party to terminate the award by notice.

21. Mr. Shroff relied upon a decision of the Patna High Court in Patna Municipal Corporation v. The Workmen of Patna Municipal Corporation and Ors. [1970] Ind Cas 1236 and read to us the following observation from that decision:

"A party to the award cannot terminate it so long it remains operative either during the period of one year or during the extended period under Sub-section (3) of Section 19".

22. We do not read the above observation as supporting the sub-mission of counsel that no advance notice can be given to terminate a settlement or an award provided the requisite period of two months required u/s 19(2) expires on the date of expiry of the settlement or award or thereafter. It is only if a notice u/s 19(2) or 19(6) expires within the period of operation of the award or settlement, such a notice will be invalid under the law. In that event the settlement or the award will continue to be in operation and any reference by Government of a dispute during the period of settlement or an award without the same being terminated under the law will be invalid.

23. In the instant case the notice u/s 19(2) was given intimating the intention of the workers to terminate the award on a date when the agreed period would also expire. To repeat, there is no legal bar to give advance intimation about the intention to terminate the settlement on the expiry of the agreed period and to start negotiation for a more favourable settlement immediately thereafter. The only condition that has to be fulfilled by such a notice is that the period of two months from the date of notice must end on the expiry of the settlement and not before it. In a given case it may be even advantageous to the parties who do not want to continue the settlement to strike a new bargain without loss of time so that unnecessary bickerings and resultant industrial unrest do not take place. In an industrial matter we are not prepared to subject a notice u/s 19(2) to the irksome vagaries or tyranny of technicalities of a notice u/s 106 of the Transfer of Property Act.

24. There is, therefore, no substance in the contention that the reference is incompetent and invalid. The appeal is dismissed with costs. The Tribunal will try to dispose of the case, expeditiously.