

(1997) 09 BOM CK 0060

Bombay High Court

Case No: Writ Petition No. 3501 of 1984

Shetkari Sahakari Sakhar
Karkhana Ltd.

APPELLANT

Vs

S.B. Shete, Presiding Officer, First
Labour Court, Solapur and
Others

RESPONDENT

Date of Decision: Sept. 23, 1997

Acts Referred:

- Bombay Industrial Relations Act, 1946 - Section 42
- Industrial Disputes Act, 1947 - Section 33

Citation: (1998) 2 LLJ 477

Hon'ble Judges: S.S Nijjar, J

Bench: Single Bench

Advocate: B.P. Apte, for the Appellant;

Judgement

1. This petition under Articles 226/227 of the Constitution of India has been filed with a prayer for issuance of Writ of Certiorari or any other appropriate writ, order or direction to call for records and proceedings in Applications (IDA) Nos. 1327 to 1530 and 1561 to 1652 of 1977 from the First Respondent Labour Court, Solapur and to quash and set aside the order dated November 2, 1983 made in Applications (IDA) Nos. 1327 to 1530 and 1561 to 1652 of 1977.

2. When the petition came up for admission, operation of the impugned order was stayed. After admission, the matter was appearing on the Board since June, 1997. A number of notices were issued to the respondents by the petitioner at the asking of the Court. The matter was argued on June 10, 1997. It was kept part heard till July 10, 1997 and Mr. Apte has stated that the matter could perhaps be amicably settled. In spite of the keen interest shown by the petitioner, none has shown any interest on behalf of the respondent. The notice of the hearing of the petitioner was also put

up on the Notice Board of the Karkhana. The matter appeared on the Board on June 10, 1997, when it was adjourned to June 13, 1997. Thereafter the matter was adjourned to June 20, 1997, July 10, 1997, August 7, 1997, September 5, 1997, September 19, 1997 and today i.e. September 23, 1997. Thus, the Court seems to be left with no alternative, but to proceed with the matter in the absence of the respondents. No reply or written statement has been filed to the writ Petition. Thus, the facts as narrated in the writ petition has remained uncontroverted.

3. The brief facts as pleaded in the Writ Petition may be noticed. The petitioners are a Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960 and carries on the business of manufacture of sugar at its factory situated at Killari, Taluka Ausa, District Osmanabad. The petitioner factory is covered by the provisions of the Bombay Industrial Relations Act, 1946. The first respondent is the Presiding Officer of the First Labour Court, Solapur. The impugned order has been passed by the first respondent exercising jurisdiction u/s 33-C(2) of the Industrial Disputes Act, 1947. The Respondent Nos. 2 to 297 are the employees of the petitioner factory. In the year 1965, the Government of India appointed the Second Central Wage Board for recommending fair wages applicable to the employees in the sugar factories all over the country. This Board made its report in the year, 1970, under which it made detailed recommendations with regard to the wage scale, dearness allowance with regard to the employees in the sugar industry all over the country. It was suggested that the recommendations should be operative for a period of 5 years from November 1, 1969. Thus the recommendations were in operation upto October 31, 1974. Thereafter the Government of maharashtra constituted a Tripartite Committee under the Chairmanship of the then Minister of Labour, by resolution dated February 15, 1975. The said Committee known as Patil Committee was required to consider the question of wage revision, dearness allowance and retention allowance for employees employed in the sugar factories in the Maharashtra State. They were to make appropriate recommendation to the Government in that regard including the retrospective effect, if any to be given to all or any of its recommendations. The Patil Committee made its recommendations on March 31, 1975. The revisions were recommended to be made operative from October 1, 1974. These were to remain in force for years. These recommendations were accepted by the Government of Maharashtra by its resolution dated May 6, 1975. The resolution was passed by the Government on May 6, 1975 requiring the Unions and the management to enter into agreements incorporating the decision given by the Patil Committee, after following the procedure laid down under the Bombay Industrial Relations Act, 1946.

4. The petitioner states that the factory of the petitioner was established during the year 1972-1973 and carried out the first trial crushing operations in the season 1974-1975. During the year 1973-74, the factory of the petitioner was virtually closed on account of drought and famine conditions in the area. The provisions of the Employees Provident Funds and Miscellaneous Provisions Act were made applicable

to the factory from the year 1976. On May 31, 1976, the union representing the respondent workers had forwarded a charter of demands to the petitioner demanding the implementation of the recommendations of the Second Central Wage Board. While these demands were pending in Conciliation under the Industrial Disputes Act, 1947, the provisions of the Bombay Industrial Relations Act, 1946 were made applicable to the petitioner factory with effect from November 20, 1976. The Conciliation proceedings under the Industrial Disputes Act, 1947, therefore, came to an end. However, the employees of the petitioner Karkhana kept on agitating that the recommendations of the Second Central Wage Board should be made applicable to the petitioner Karkhana and that the employees should be given benefit of the said recommendations from October 31, 1974. On January 4, 1977, the employees of the petitioner Karkhana resorted to an illegal strike on the issue of immediate implementation of the recommendations of the Second Central Wages Board and the recommendations of the Patil Committee. The District Deputy Registrar under the Co-operative Societies Act, Osmanabad, rushed to the factory and had a discussion with the representatives of the Union. The said District Deputy Registrar purporting to act on behalf of the petitioner signed an agreement on the same day with the representatives of the union, agreeing in principle therein that the recommendations of the Second Central Wage Board for the sugar industry and the recommendations of the Patil Committee would be made applicable to the petitioner Karkhana. The petitioner states that the action of the District Deputy Registrar was without authority of law. Thus, the agreement is not binding on the petitioner. In the year 1978-1979, there was no registered trade union representing the employees of the petitioner. Thus, the Government Labour Officer and five Elected Representatives of the employees were acting as representatives of the employees within the meaning of Section 30(iv) to (vi) of the Bombay Industrial Relations Act, 1946. There was another strike by the employees on January 26, 1978 for the implementation of the recommendations of the Second Central Wage Board and the recommendations of the Patil Committee. The issue was discussed between the management of the petitioner and the Government Labour Officer and an agreement was reached between the parties on February 11, 1978. It was agreed that the petitioner would implement the Wage Board recommendations and to grant the wage scales recommended by the Second Central Wage Board in respect of all the permanent employees retrospectively from February 1, 1977. It was also agreed that the full dearness allowance recommended by the Patil Committee by its report dated March 31, 1975, will also be paid linked to the Index Numbers as on April 1, 1977 and on October 1, 1977. The petitioner also agreed that all the Government employees will be classified into appropriate Grades according to the Recommendations of the Second Central Wage Board. The Government Labour Officer and the 5 Elected Representatives of the employees gave a notice of change dated January 5, 1979 u/s 42(2) of the Bombay Industrial Relations Act, 1946, demanding permanency of employees, wage scales for permanent and temporary employees, implementation of the recommendations of the Second Central Wage

Board and implementation of the Patil Committee recommendations. The demands arising out of the said notice were discussed between the Elected Representatives of the employees and the management of the petitioner in the presence of the Government Labour Officer. A registered agreement dated January 28, 1979 was signed between the petitioner on the one hand and the Elected Representatives and the Government Labour Officer on the other hand. By this agreement, the question of the wage scale applicable to the clerks in Grade 5 and the permanent operatives under the recommendations of the Second Central Wage Board were also settled. The agreement also made revisions in the dearness allowance payable to the employees of the petitioner Karkhana. The aforesaid agreement was implemented. The Respondents Nos. 2 to 297 had filed applications u/s 33-C(2) of the Industrial Disputes Act, 1947 on August 10, 1977 before the First Respondent Labour Court, Solapur. It was claimed in the applications that the recommendations of the Second Central Wage Board as well as the recommendations of the Patil Committee were binding on the petitioner, by virtue of the memorandum of compromise dated January 4, 1977. Therefore, the petitioner had become liable to implement the recommendations of the Second Central Wage board as well as the recommendations of the Patil Committee with effect from October 1, 1977. The Respondent Nos. 2 to 297, therefore, claimed that they are entitled to basic wages under the recommendations of the Second Central Wage Board from October 1, 1974 and the dearness allowance recommended by the Patil Committee also with effect from October 1, 1974. It was claimed that the petitioner has wrongly implemented the terms of the compromise dated January 4, 1977. Thus, they were entitled to difference in basic wages and dearness allowance under the terms of the Recommendations of the Second Central; Wage Board and the Patil Committee from October 1, 1974 to June 30, 1977.

5. The petitioner appeared before the Labour Court and contested the claim put forward by the respondents. It was stated that the so called compromise dated January 4, 1977 had not been signed by anybody authorised by or on behalf of management of the petitioner. The Deputy District Registrar had no authority, whatsoever either by Statute or otherwise to enter into the said compromise. It was pointed out that even assuming, without admitting, that the said compromise dated January 4, 1977 could be treated as a binding agreement under the provisions of the Bombay Industrial Relations Act, 1946, the said agreement did not require the petitioner to implement the Recommendations of the Second Central Wage Board or the recommendations of the Patil Committee with effect from October 1, 1974. It was further stated that the agreements dated February 11, 1978 and January 28, 1979 were registered agreements entered into between the representatives of the parties. These agreements have been entered upto after giving of a notice of change and consequently, they were legally binding on all the employees in the sugar industry in the local area by virtue of Sections 30 and 114 of the Bombay Industrial Relations Act, 1946. It was further pointed out that under the registered

agreement dated February 11, 1978, the parties have specifically agreed that the basic wages payable under the Recommendations of the Second Central Wage Board would be applicable from February 1, 1977. Further it was agreed that the dearness allowance recommended by the Patil Committee would be payable as linked to the Index Numbers as on April 1, 1977 and October 1, 1977. The petitioner further pointed out that by the registered agreement dated January 20, 1979, it was agreed that the recommendations of the Patil Committee with regard to the dearness allowance would be made operative from October 1, 1976. It was submitted that the recommendations of the Second Central Wage Board and the Patil Committee were not binding on the petitioner without being accepted by the parties. Even if there was an agreement dated April 1, 1977, it was submitted that the same has been superseded by the two subsequent agreements dated February 11, 1978 and January 28, 1979.

6. The first respondent recommended all the applications by an order dated March 20, 1978. Common evidence was recorded in all the applications. By consent of the parties, it was agreed that the evidence recorded in application (IDA) No. 1327 of 1977 would be read as common evidence in all the applications. The parties led documentary evidence as well as oral evidence. After hearing the arguments of the counsel for the parties, the impugned order dated November 2, 1983 has been passed. It has been ordered that the petitioner shall pay the difference of wages according to the Second Central Wage Board and the Patil Committee Award as claimed in the application. It was also ordered that the petitioner shall pay 5% of the amount decreed in favour of the respondents by way of cost.

7. It may be noticed at this stage that preliminary objection to the maintainability of the application u/s 33-C(2) had been raised by the petitioner. It was stated that the claims made by the applicants are false and imaginary and not covered u/s 33-C(2) of the Industrial Disputes Act, 1947. It was submitted that the entire purpose of the said section was to effect recovery of the money due from the employer. Therefore, it was stated that the Labour Court had no jurisdiction to determine the claim first and to order its recovery. It was requested that the preliminary objection about the maintainability of the application may be treated as a preliminary issue. The preliminary issues were decided by the Labour Court against the respondents. The respondents, therefore, preferred Writ Petition under Article 227 of the Constitution of India being Writ Petition No. 1752 of 1981. The said Writ Petition was decided on August 10, 1981. It was held that the applications are maintainable and are, therefore required to be decided on merits and in accordance with the law. The matter was remanded back to the Labour Court for decision on merit. As the petitioner had only filed the written statement with regard to the maintainability of the application earlier, they were permitted to file the written statement on merits also on payment of Rs. 300/- as cost. In the fresh written statement, it was stated that the recommendations of the Second Central Wage Board and the Patil Committee had no legal or binding force as the same are recommendatory and not

mandatory. It was stated that there was no settlement between the parties and there were subsequent agreements dated February 11, 1978 and January 28, 1979 between the representatives of the parties, after the notice of change under the Bombay Industrial Relations Act, 1946. The agreement being registered the purported agreement dated January 4, 1977 can have no legal force. The said agreement cannot be called a settlement under the Bombay Industrial Relations Act. It was also submitted that the material and complicated questions of law and facts cannot be investigated by the Labour Court u/s 33-C(2) of the Industrial Disputes Act. It was submitted that the entire claim and fitment in the Grade made under the a location was based on a fictitious assumption that the document dated January 4, 1977 was a settlement. It was further submitted that under the guise of simple money claim and computation thereon, the applicants were trying to keep B.I.R. Act away from this vital issue by trying to establish their claim over classification and gradation u/s 33-C(2) of the Industrial Disputes Act.

8. In view of the aforesaid stand taken by the parties, the Labour Court framed 12 issues. It has held that the Second Central Wage Board and the Patil Committee Award are binding on the petitioner. It was also held that the petitioner had been unable to prove that the recommendations of the Second Central Wage Board and the Patil Committee Award do not have any statutory force, and they are not binding. It has been further held that the respondents have proved that the recommendations of the Second Central Wage Board and the Patil Committee are binding upon the petitioner. It has also been held that the settlement dated January 4, 1977 is valid and legal. It is further held that the petitioner has failed to prove that the Court has no jurisdiction to interpret that settlement. It was further held that the petitioner has failed to prove that the settlement dated January 4, 1977 is not an enforceable document. It has also been held that the respondents are not demanding classification and gradation other than that given in the agreement dated April 1, 1977. It has also been held that the petitioners have failed to prove that the claim put forward by the respondents is not only the money claim, but they require fixation of gradation first.

9. It is submitted by Mr. Apte, learned counsel appearing for the petitioner that all the findings given by the First Respondent Labour Court are perverse. The findings are against the settled proposition of law. They are based on total misreading of the documents produced before the Court. I have been taken through the entire record and have also perused the various agreements. A perusal of the resolution passed by the Maharashtra Government shows that the recommendations of the Patil Committee were accepted by the Government. However, after accepting the same an appeal is made to the management and representatives of the Union in the sugar industry that they should take steps to enter into agreements incorporating the decision given by the Chairman of the committee and accepted by the State Government after following the procedure laid down under the Bombay Industrial Relations Act, 1946, to which the sugar industry in the State of Maharashtra is

amenable. In view of the aforesaid appeal, it becomes quite obvious that the recommendations given by the Second Central Wage Board as also the recommendations given by the Patil Committee were only recommendatory in nature. They would become binding on the parties only if the agreements are entered into between the management and the employees in accordance with the provisions of Sections 30 and 114 of the Bombay Industrial Relations Act. It is in view of this, that the submission of the petitioner with regard to status of agreement dated January 4, 1977 has to be examined. A perusal of the impugned award shows that the said agreement has been entered into on the date when the employees of the petitioner were on strike. The agreement is signed by the Deputy Registrar of Co-operative Societies. It is not signed by any member of the management of the petitioner society. There is no resolution to the effect that the Deputy Registrar was permitted to function as the representative of the management. However, it was argued before the Labour Court that since the Deputy Registrar becomes the ultimate head of the Co-operative Society, thus he is the head of the petitioner Karkhana also. I find this argument of the respondents against the provisions of the Bombay Industrial Relations Act. It was argued before the Labour Court that the wage settlements are covered under Schedule II of the Bombay Industrial Relations Act. It was also argued that unless a valid settlement is entered into no change in the existing wage pattern can be effected. It was also argued that a definite procedure is laid down under the Act. It was argued that the Union is required to give notice of change u/s 42(2) of the Act. It was also argued that in case there is an agreement, then it is required to be registered under the Act. It was submitted that the District Deputy Registrar had no authority under the law to sign any compromise on behalf of the petitioner. The agreement dated January 4, 1977 is signed by the Managing Director of the petitioner only as a witness. The agreement is not registered.

There was also no representative of the Union. In fact, the Government Labour Officer has signed as a representative of the union. Even, he had no legal authority and capacity to enter into an agreement on behalf of the employees. After considering the above submissions of the parties, the Labour Court has held the agreement dated January 4, 1977 to be binding, and in consonance with the recommendations made by the Second Central Wage Board and the recommendations of the Patil Committee. The Labour Court has brushed aside the objection about the registration of the Agreement dated January 4, 1977 on the ground that the petitioner having implemented the recommendations of the Second Central Wage Board and recommendations of the Patil Committee by the agreement dated January 28, 1979, the requirement of the registration was fulfilled. On the one hand the Labour Court has held that the agreements dated February 11, 1978 and January 28, 1979 are not relevant for the decision of the suit. On the other hand, the Labour Court has relied upon the implementation of the agreement dated January 28, 1979 to brush aside the legal objection about the registration of the

agreement dated January 4, 1977 under the Bombay Industrial Relations Act, 1946. The findings of the Labour Court with regard to the registration of the agreement are contrary to the provisions of the Bombay Industrial Relations Act. An agreement can only be registered by complying with the provisions of Section 42 of the Act. Admittedly the so-called agreement dated January 4, 1977 was not registered. It is also on the record that the subsequent agreement dated January 28, 1979 is registered in accordance with the law. It is also on the record that the said agreement had been implemented. In view of the above, the Labour Court fell into error in holding that the agreement dated January 4, 1977 is legal and binding on the petitioner. The said agreement has not been signed by the representative of the management as required under the provisions of the Bombay Industrial Relations Act. The Deputy Registrar had no authority in law to act as a representative of the management of the petitioner Karkhana. Even if some special power could have been given to the Deputy Registrar, that could only be done by passing a resolution by the petitioner. No such resolution has been passed by the petitioner Karkhana. It is also noticed that all the respondents have taken advantage of the pay revision which has been made on account of the agreement dated January 28, 1979. Having accepted the pay revision under the agreement dated January 28, 1979, it would not be open to them to claim that the arrears of wages should have been paid with effect from October 1, 1974. Coming to the second submission of the petitioner to the effect that the Labour Court travelled beyond its jurisdiction u/s 33-C(2), it has been held that the Labour Court has the power to interpret the awards. The proposition of law as enunciated by the Labour Court cannot be faulted. However, the said proposition of law is not attracted in the facts and circumstances of this case. Section 33-C(2) envisages recovery of predetermined amount. Here the Labour Court was faced with a situation where the employees were demanding certain monetary benefits on the basis of the agreement which is dated January 4, 1977. It was, however, pleaded on behalf of the petitioner that the said agreement is not binding. Thus, the Labour Court was required to adjudicate as to whether or not the agreement dated January 4, 1977 has been executed in accordance with the law. A perusal of the award shows that the Labour Court has examined oral as well as documentary evidence in order to come to the conclusion that the Deputy Registrar of Co-operative Societies had the authority to sign an agreement on behalf of the petitioner Karkhana. These functions could only be performed by the Labour Court when adjudicating an industrial dispute. It is not the function of the Labour Court when exercising power u/s 33-C(2) to adjudicate on the legality or otherwise of an agreement or settlement on the basis of which the wages are claimed by the employees. The matters incidental to the computation of wages can be examined by the Labour Court. Here the very foundation of the claim of the employees was disputed by the Petitioner on dated January 4, 1977 is no agreement in the eye of law. Thus, I find merit in the submissions made by Mr. Apte. The Labour Court has given erroneous finding with regard to the agreement dated January 4, 1977. The Labour Court has also travelled beyond its jurisdiction in determining that the

agreement dated January 4, 1977 is final and binding, even though the same has not been registered under the Bombay Industrial Relations Act, 1946. Consequently, the writ petition is allowed.

10. Rule is made absolute in terms of prayer clause (a). There shall be no order as to costs.

11. Certified copy expedited.