

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 436 OF 2017

THE MADGAUM URBAN CO-OPERATIVE
BANK LTD., THROUGH ITS MANAGING
DIRECTOR SHRI KISHORE S. AMONKAR ... Petitioner

Versus

STATE OF GOA THROUGH THE
SECRETARY(LABOUR) AND 12 ORS., ... Respondents

Mr. Shivan Desai, Advocate for the petitioner.

Mr. Pravin N. Faldessai, Addl. Government Advocate for the
respondent nos. 1 to 3.

Mr. Shivraj Gaonkar, Advocate for the respondent nos. 4 to 13.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date:- 11th July, 2017

ORAL ORDER (Per F. M. Reis, J)

Heard Mr. Shivan Desai, learned counsel appearing for
the petitioner, Mr. P. Faldessai, learned Addl. Government
Advocate appearing for the respondent nos. 1 to 3 and Mr. Shivraj

Gaonkar, learned counsel appearing for the respondent nos. 4 to 13.

2. The challenge in the above petition is to an order dated 21.04.2017 passed by the respondent no.2 under Section 33-C of the Industrial Disputes Act, 1947 whereby the application filed by the respondent nos. 4 to 12 to claim the dues from the petitioner came to be allowed.

3. Mr. S. Desai, learned counsel appearing for the petitioner has submitted that the respondent no.2 had no jurisdiction to adjudicate on the dispute raised with regard to the eligibility of the petitioner to put up a claim based on the settlement dated 29.07.2010. The learned counsel further pointed out that the settlement cannot be treated to be a “settlement” in terms of Section 2(P) of the Industrial Disputes Act as according to him, the respondent nos. 4 to 12 were not signatories to such settlement and as such the question of claiming any amount from the petitioner would not at all arise. The learned counsel further pointed out that the subject settlement was entered into with the majority union and

it was subject to furnishing an undertaking by any other person who wants to avail of the benefit of such settlement on or before 20.08.2010. The learned counsel further submits that the respondent nos. 4 to 12 chose to furnish such undertaking in terms of the Form attached to such settlement but deleting the clause whereby deduction has to be made from the amount payable, to the union. The learned counsel further submits that the petitioner has brought to the notice of the said respondents that the question of raising such truncated undertaking would not meet the requirements of such settlement and as such the said respondents were not entitled for the benefit of the settlement. The learned counsel further submits that the said respondents belatedly after a period of five days have signed the undertaking in the original Form but according to him such belated undertaking would not meet the conditions stipulated in the settlement to enable the said respondents to take the benefits of settlement arrived at between the parties. The learned counsel further submits that the respondent nos. 4 to 12 thereafter made a representation to the concerned authority with regard to the stand taken by the petitioner which

came to be rejected and the matter was referred to for conciliation before the Conciliation Officer. The learned counsel further submits that in the meanwhile, the conciliation proceedings were dropped as the said respondents informed that they would approach the appropriate forum to get their claim adjudicated and accordingly the said respondents chose to file an application under Section 33-C of the Industrial Disputes Act which came to be disposed of by the impugned order. The learned counsel further submits that the petitioner had raised three different objections to the application filed by the respondent nos. 4 to 12 essentially on the ground that such respondents were not parties to the settlement nor could they avail of the benefits of such settlement as they had not followed the terms and conditions of the settlement in totality. It is further pointed out that it was also the contention of the petitioner that the said respondents would have to raise a dispute before the appropriate forum which would have to be adjudicated in accordance with law. The learned counsel further submits that as the respondent nos. 4 to 12 are not signatories to such settlement, the question of invoking any jurisdiction of the respondent no.2 in

terms of Section 33-C of the said Act would not at all be justified. The learned counsel further submits that Section 33-C(1)(A) clearly provides that the amount has to be fixed or determined before a party can avail of the remedy under Section 33-C of the said Act. The learned counsel further submits that as in the present case, there is no determination of such amount, the exercise resorted to by the respondent nos. 4 to 12 in invoking the jurisdiction of the respondent no.2 is totally untenable and cannot be accepted. The learned counsel further submits that the impugned order is in excess of its jurisdiction which would call for interference of this Court. The learned counsel further pointed out without prejudice, in any event, the claim of a sum of Rs.40,31,071/- is itself vague as according to him there were no particulars furnished by the respondent nos. 4 to 12 to enable the petitioner to raise the defence with regard to such amount. It is further pointed out that in such circumstances as the claim of the respondent nos. 4 to 12 itself is vague, the question of the respondent no.2 directing the payment of such amount would not at all arise. The learned counsel further pointed out that the respondent nos. 4 to 12 have also not

challenged the rejection of the representation made before the concerned authorities by order dated 07.09.2010 as well as of the Board dated 15.10.2010. It is further pointed out that the observations in the impugned order that there is no correspondence after 25.10.2010 is contrary to the records. The learned counsel as such points out that the impugned order passed by the respondent no.2 be quashed and set aside.

4. On the other hand, Mr. Shivraj Gaonkar, learned counsel appearing for the respondent nos. 4 to 13 has pointed out that Clauses 1 and 2 of the said settlement read together would clearly show that all the officers of the petitioner are made parties to such settlement. It is further pointed out that the fact that the said respondents are also officers of the bank is not in dispute and as such the learned counsel submits that the reference to the schedule in such clause shows that the names of the respondents are admittedly included which would clearly disclose that the benefits of the settlement were also extended to the respondent nos. 4 to 12 herein. The learned counsel further points out that the undertaking

as contemplated in clause 40-A of such settlement was in fact duly executed by the said respondents though by deleting the sentence wherein a deduction had to be made for the benefits of the union to which such respondents are not members. It is further pointed out that immediately after it was brought to the notice of such respondents that the petitioner would not accept such deficient undertaking, the respondents furnished an undertaking in terms of the Form attached to the settlement and submitted such undertaking to the petitioner on 25.08.2010. The learned counsel further pointed out that having accepted the said undertaking as amended it was not open to the petitioner to refuse the benefits of such settlement to the respondent nos. 4 to 12. It is further pointed out that the settlement is for the period from 2010 to 2013 and the amounts payable in terms of the said settlement are clearly mentioned therein and as such the claim put forward by the respondent nos. 4 to 12 to the tune of Rs.40,31,071/- is by calculating such amount as mentioned in such settlement. The learned counsel further pointed out that the whole exercise on the part of the petitioner is to delay the payment of the amount to the respondent nos. 4 to 12 who have been

working in the establishment of the petitioner for all these years carrying out similar work as those carried out by the other officers who have been given the benefits of such settlement. The learned counsel further submits that the question of giving an undertaking itself is erroneous as according to him it is not open to the petitioner to seek such undertaking as laid down by this Court in the judgment reported in **2008(1) Mh.LJ 477** in the case of **Cipla Ltd., vs Anant Ganpat Patil and others**. The learned counsel further pointed out that the respondent no.2 after examining minutely the settlement arrived at in the settlement relied upon by the said respondents, has come to the conclusion that such respondents are also parties to the said settlement and as such entitled to claim the benefits therefrom. The learned counsel further submits that in such circumstances, in case there was any delay as claimed by the petitioner to furnish such undertaking, such respondents would be deprived of the amount for the period of five years only and by no stretch of imagination refused benefits of the settlement to the respondent nos. 4 to 12. The learned counsel further pointed out that as the respondent nos. 4 to 12 deprived the benefits of such settlement,

there is no case made out for any interference in the impugned directions issued by the respondent no.2. The learned counsel further submits that the whole exercise on the part of the petitioner is only to delay the legally payable amount to the respondent nos. 4 to 12 by raising frivolous and untenable objections to the proceedings initiated by the respondent nos. 4 to 12. The learned counsel as such submits that there is no infirmity in the impugned directions by the respondent no.2 and consequently, the petition be accordingly rejected.

5. We have given our thoughtful consideration to the rival contentions and we have also gone through the records. Clauses 1 and 2 of the said settlement dated 29.07.2010 read thus :

1) **TERMS AND CONDITIONS:**

1) The Basic Pay Scale's for the officer's cadre shall be as follows w.e.f. 01.07.2010 and fitment of the existing officer's in the service of the Bank as on 01.07.2010 shall be as shown in the Annexure I to the settlement.

i) Directly Recruited Officer Scale : for Officers/Officers I/T:-

ii) **JUNIOR OFFICERS :**

iii) OFFICERS :

iv) Executive OFFICERS :

v) Dy. General Manager :

2) DEARNESS ALLOWANCE FORMULAE

a. **The existing D.A. Formulae** shall undergo change to the extent that for every 4 (Four) points rise or fall in the All India Average Working class Consumer Price Index Numbers 1960 = 100 (General) above 2836 points of Index the D.A. shall be only 00.15 percent of the Basic Pay. For the sake of record it is mutually agreed that D.A. for the points from 1684 to 2836 is merged into the existing Basic Pay of

the employees and New Basic Pay Scale has been worked out as mentioned in the clause (1) above. The New D.A. rate shall be effective from 01.07.2010.

b. Consumer price Index Numbers as published by Shimala Burea of Statistics, Govt. of India, shall be averaged for the Quarters ending March, June, September and December for the purpose of Calculating D.A.

c. While calculating D.A., it shall be rounded off to the nearest next rupee.

6. On perusal of the Annexure referred to in the said clause, it is not disputed that the names of the respondent nos. 4 to 12 figure therein. In such circumstances, the contention of Mr. Desai, learned counsel appearing for the petitioner that the respondent nos. 4 to 12 cannot avail of such benefits of settlement cannot be accepted. The only aspect which remains to be considered in such circumstances is whether merely because an undertaking given before the cut off date i.e. 20.08.2010 and corrected on 25.08.2010 can by itself deprived the respondent nos. 4 to 12 of the benefits of such settlement. No doubt, clause 40-A of

the said settlement stipulated that such undertaking had to be furnished on or before 20.08.2010. The fact that the undertaking was in fact furnished by the respondent nos. 4 to 12 before the said date is not in dispute. The only aspect is that the portion which was deleted and thereafter amended on 25.08.2010 can deny the benefits of such settlement to the respondent nos. 4 to 12. The fact that the undertaking signed on 25.08.2010 is in terms of the settlement is not in dispute. In such circumstances, we find that considering that an undertaking in terms of clause 40-A of the said settlement was already given before 20.08.2010 which came to be thereafter amended in terms of the draft attached to such settlement cannot be a ground to deny the benefits of such settlement to the respondent nos. 4 to 12. It is also to be noted that when the matter was taken up for hearing on the last date as the dispute was with regard to payment of salary to the officers of the bank which was hanging fire from the year 2010 and with the consent of the learned counsel upon instructions, the matter was referred to the Lok Adalat to enable the parties to work out a solution on the quantum of the amount. But the records however reveal that the petitioner chose to

refuse to have any talks with regard to such settlement before the Lok Adalat. The conduct of the petitioner in such circumstances discloses that the whole attempt is only to deny the legally payable amount to the respondent nos. 4 to 12 who are admittedly carrying out duties in the bank from 2010 up to this date without being paid the due salary. In such circumstances, taking note of the conduct of the petitioner in denying the benefits of the settlement to the respondent nos. 4 to 12 on untenable grounds, we find that the question of interfering in the impugned directions issued by the respondent no.2 in the present petition would not at all be justified.

7. It is well settled that a settlement is arrived at after negotiations between the employer and the officers which has to be encouraged particularly in the interest of peace and well being in the establishment. It has to be kept in view that under the scheme of labour legislation, collective bargaining and principles of industrial democracy permeate the relationship between the Management at one side and the Union which resorts to collective bargaining on behalf of its members on the other side. Such

collective bargaining which may result in a just and fair bargain would always be beneficial to the Management as well as to the body of workmen and the society at large as there would be peace and tranquility in view of such settlement. Keeping in view the said salient features, the subject settlement has to be scanned and scrutinized. As pointed out herein above, the interest of respondent nos. 4 to 12 and their respective salaries in terms of such settlement are reflected in the annexure attached to the subject settlement. In such circumstances, though the petitioner are disputing the entitlement of the respondent nos. 4 to 12 to the amounts claimed nevertheless, the impugned order passed by the respondent no.2 suggests that considering the clauses in the settlement as well as the earlier proceedings, the petitioners are liable to pay the amounts to the said respondents in terms thereof considering that the settlement was by a majority union and a declaration in terms thereof has already been submitted by the said respondents.

8. With regard to the contention of Mr. S. Desai, learned counsel appearing for the petitioner that the claim of the petitioner

is itself vague, we find that it was incumbent upon the petitioner to dispute the amount by disclosing to what extent there was an error in the amount claimed by the respondent nos. 4 to 12. As pointed out by the learned counsel appearing for the respondent nos. 4 to 12, the amount payable in terms of the settlement are clearly determined. But however, in the interest of justice and in the peculiar facts and circumstances of the case, the petitioner if so advised are at liberty to file their own calculations in support of their claim which the respondent no.2 shall examine after hearing the respondent nos.4 to 12 in accordance with law. To that limited extent, we find that the petitioner are at liberty to raise such contention before the respondent no.2 who will decide such objection, if any, after hearing the respondent nos. 4 to 12 in accordance with law.

9. Subject to the above, we find no merits in the above petition which stands accordingly rejected.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

10. At this stage, Mr. S. Desai, learned counsel appearing for the petitioner seeks stay of the operation of the order passed today. Considering that the amounts are not being paid since 2010, we find that the operation of the order passed today is stayed for a period of four weeks subject to the petitioner depositing in this Court the total amount payable to the respondent nos. 4 to 12 in terms of the subject recovery certificate within one week from today.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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