

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 192 OF 2018

Santosh Kanta Assoldekar & anr. Petitioners.

Versus.

State of Goa, through Chief
Secretary & others. Respondents.

Mr. Devidas Pangam, Advocate for the Petitioners.

Mr. A. Jamadar holding for Mr. Pravin Faldessai, Additional Govt.
Advocate for Respondents No.1, 3 & 4.

Ms. Amira Abdul Razaq, Advocate for the Respondent No.2.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 30 October 2018.

P.C.:

By order dated 14 August 2018, the Petition was directed to be fixed for final disposal at the admission stage. Accordingly, taken up for hearing.

2. The Petitioners have challenged the order passed by the Deputy Labour Commissioner, Government of Goa dated 17 May 2017 refusing to make the Reference in respect of the dispute raised by the Petitioners who are workers of M/s National Auto Accessories Limited, which is currently in liquidation.

3. On 28 September 2018 M/s. National Auto Accessories Limited, the Company, was wound up by an order of the Court. The workmen filed their claims before the Official Liquidator. The Official Liquidator, by an order dated 20 April 2011 rejected the claim of the Petitioners. The Petitioners thereafter, filed a Company Application before the Company Court. This order of rejection of the Official Liquidator was confirmed by the learned Company Judge.

4. Thereafter the Petitioners approached the Deputy Labour Commissioner individually with a prayer that the proceedings under the Industrial Disputes Act be initiated to settle the claims. The Deputy Labour Commissioner, by an order dated 11 April 2016 rejected the request of the claimants holding that such individual requests cannot be entertained and the same needs to be espoused by the Trade Union or five members. The Petitioners, thereafter, along with thirty other workers made a fresh representation. By the impugned order dated 17 May 2017, the same was rejected, holding that there is no merit in the demands.

5. We have heard Mr. D. Pangam, learned Counsel for the Petitioners, Mr. A. Jamadar, learned Additional Govt. Advocate

for Respondents No.1, 3 & 4 and Ms. Amira Razaq, learned Counsel for Respondent No.2.

6. Mr. Pangam, learned Counsel for the Petitioners submitted that the Commissioner could not have gone into the merits of the rival contentions and has far exceeded his jurisdiction which is a limited one. Mr. Pangam relied upon a decision of the Division Bench of this Court in the case of *The Philips Workers' Union vs. Philips India Ltd and ors.*¹. He also relied upon a decision of the Apex Court in the case of *Oswal Agro Furane Ltd. and another vs. Oswal Agro Furane Workers Union and ors.*² and of the Single Judge in *Sarva Shramik Sangh & anr. vs. Swan Mills Ltd. & anr.*³ to contend that even otherwise the conclusion of the Commissioner that all issues stand foreclosed and no claim can be raised by the Petitioners, is not correct as according to the Petitioners-Disputants the services of the Petitioners were not dispensed with as per the provisions of the labour laws governing them.

7. Ms. Razaq, learned Counsel for the Official Liquidator submitted that the Company is under liquidation and the claims of

1 (2000) 3 All MR 201

2 (2005) 3 SCC 224

3 2014 (7) Bom.C.R. 581

the Petitioners were examined and were rejected, which orders have been confirmed by the Company Court. She submitted that the decisions relied upon by the Petitioners in the cases of *Oswal Agro Furane Ltd.* and *Swan Mills Ltd.*, are distinguishable on facts as there was a closure of the factory, which is not the present case. It was also contended that while disposing of the Company Appeals, all contentions were kept open.

8. In the case of *Oswal Agro Furane Ltd.* and *Swan Mills Ltd.* issues arose before the courts as to whether the settlement would *ipso facto* give rise to termination of services, and whether such a settlement would foreclose all rights of the workmen. In the circumstances, it was held that all rights cannot stand foreclosed. Whatever may be the factual position in the present case, there is an area of argument albeit limited, that the Petitioners wish to pursue. It cannot be said that all doors of the Petitioners are closed and there is no area for them to adjudicate at all. This is not to say that the scope left with the Petitioners to adjudicate, is in their favour on merits, but what we wish to emphasize is that there are arguments open to the Petitioners.

9. Though arguments are made to the contrary by the learned Advocate for the Official Liquidator, while rejecting the

claim, the Liquidator himself has stated as follows :

“The Official Liquidator has got no jurisdiction to entertain any dispute relating to the settlement dated 9th April 2001 entered into between the workmen and the company in liquidation which has become final and binding on all the parties to the settlement. Further, the settlement has become final and binding on you and the Official Liquidator is not competent or empowered to adjudicate the dispute raised as regards the alleged invalidity or nullity of the said settlement Section 25N and Section 250 of the Industrial Dispute Act 1947. Any declaration as regards the said settlement can only be granted by the competent court of law. In the absence of any such order, the said settlement would be final and binding between the parties thereto.”

[emphasis supplied]

The learned Company Judge, while confirming the decision of the Official Liquidator, observed that the Liquidator cannot be faulted for taking a contention that it has no jurisdiction to decide the said issue. The observations of the learned Company Judge in that regard are found in the order dated 11 December 2015 in paragraph 5 thereof, which read as under :

“5. With regard to the finding of the Official Liquidator that merely because the appellant had proceeded to file an application to put up the claim before the Labour Court would preclude the appellant to raise a dispute with regard to the validity or otherwise of the settlement, I find that it is not a matter which can be adjudicated by the Official Liquidator as in any event this aspect can be considered by the competent

Court/Tribunal in case the appellant raises such claim before the appropriate forum under the Industrial Dispute Act. This contention of the parties on that count is left open to examine after hearing the parties in accordance with law.

[emphasis supplied]

Therefore the opposition now by the Official Liquidator for the Petitioners to approach the authorities under the Industrial law, is not warranted. It is different to agitate the matter on merits before the Competent Authority.

10. The Commissioner cannot be considered to be the Competent Authority. The Division Bench of this Court in *The Philips Workers' Union*, after referring to Section 12 of the Industrial Disputes Act, has commented upon the jurisdiction of the Conciliation Officer as under :

“Under the provisions of sub-section (1) of section 12, the Conciliation Officer is to hold conciliation proceedings where an industrial dispute exists or is apprehended. The officer is then to investigate into the dispute and "all matters affecting the merits and the right settlement thereof" for the purpose of bringing about a settlement of the dispute. Wide powers are conferred upon the Conciliation Officer in order to bring about an amicable settlement between the parties for the purpose of resolving industrial disputes. These powers are intended to subserve the salutary public interest of fostering industrial peace and harmony. If the

conciliation proceeding ends in a settlement, the Conciliation Officer is required to intimate the appropriate Government and a settlement arrived at in Conciliation is given a high degree of sanctity by the provisions of section 18(3) of the Act. If a settlement ends in failure, the Conciliation Officer has to send a report to the appropriate Government which is empowered thereafter to make a reference to adjudication by the Industrial Court or Tribunal. These are significant provisions enacted with a view to fostering industrial peace and harmony. The power of the Conciliation Officer to decide whether to admit a demand in conciliation, is conditioned by whether an industrial dispute exists or is apprehended. It would not be appropriate for the Conciliation Officer, even before admitting the dispute in conciliation, to launch upon an elaborate or detailed investigation into the merits of the dispute or of the correctness of the rival submissions of the parties on the merits of the case before him. In fact, the position of law is well settled that even at a subsequent stage, the appropriate Government while deciding whether or not to refer a dispute for adjudication by the tribunal cannot conduct a detailed investigation into the merits of the case. The consideration of the merits of the dispute takes place under sub-section (2) of section 12 once the dispute is admitted in Conciliation. Sub-section (2) of section 12 empowers the Conciliation Officer to investigate the dispute and all matters affecting the merits in order to bring about an amicable resolution. Consequently, it will be erroneous for the Conciliation Officer to even decline to admit a demand in conciliation though an industrial dispute exists or is apprehended upon a view formed by the Conciliation Officer on the merits of the

dispute. Conciliation is an important first stage provided by the law, attended as it is by a degree of flexibility and informality. The provisions for conciliation must be given full effect in order to enable the Conciliation Officer to persuade the management and the workmen to sort out their differences. The discretion conferred on the Conciliation Officer in subsection (1) of section 12 in the case of undertakings which are not public utilities has to be exercised so as to effectuate the public purpose underlying the conferment of power.”

This, therefore, is the role of the Commissioner as a Conciliation Officer.

11. The Commissioner has not only entered into the merits of the dispute, but he has adjudicated the dispute and thereafter has taken no further steps. This is clearly not permissible. Since the order passed by the Commissioner is not within the ambit of his jurisdiction, the same will have to be set aside and the Commissioner will have to take a decision/steps keeping in mind the legal position regarding the scope of his jurisdiction. As regards the ambit of the jurisdiction, we have already reproduced and made reference to the decision of this Court.

12. Accordingly, the Writ Petition is allowed. The order passed by the Deputy Labour Commissioner dated 17 May 2017, is

quashed and set aside. The Deputy Labour Commissioner will take a fresh decision in the light of what is stated above in respect of the scope of his jurisdiction and take an appropriate decision as per law. For that purpose, the representation made by the Petitioners stands restored to the file of the Deputy Labour Commissioner.

13. The Commissioner will give a date for appearance of the parties within two weeks and thereafter take appropriate proceedings above, within twelve weeks, after following the due procedure laid down.

14. The Writ Petition is disposed of in above terms.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.