

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.25551 of 2019

and

W.M.P.No.25081 of 2019

The Management of

Roca Bathroom Products Private Limited,
Rep., by its Factory Manager,
Mahatma Gandhi Road,
Ranipet-632 401, Vellore District.

.. Petitioner

-vs-

1.Ranipet Labour Union,
Rep., by its Secretary, Shri S.Nagarajan,
11, Mahatma Gandhi Road,
Ranipet-632 401, Vellore District.

2.Roca Ranipet Labour Union,
Rep., by its Secretary,
Registration No.1581/VLR,
No.13 A, Ambedkar Street,
Navalpur, Vellore District.

.. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the Industrial Tribunal, Tamil Nadu, Chennai in I.A.No.8 of 2019 and quash the order dated 06.03.2019, direct the Industrial Tribunal, Chennai to consider the preliminary issue as to whether an award can be passed in terms of the Settlement dated 21.1.2019 between petitioner and 2nd respondent.

For Petitioner : Mr.Anand Gopalan
For M/s.T.S.Gopalan & Co.

For Respondents: R1 - Mr.V.Prakash, Senior Counsel
assisted by Ms.M.Karthikayani

: R2 - Mr.Balan Haridas

ORDER

The order dated 06.03.2019, passed in I.A.No.8 of 2019 in I.D.Nos.3 and 29 of 2013 is sought to be quashed in the present writ petition.

2.The Management of Roca Bathroom Products Private Limited is the writ petitioner and they are in the business of manufacturing ceramic wares. The petitioner is a Multinational Company having factories in various locations across the Globe.

3.The learned counsel for the writ petitioner mainly contended that the 2nd respondent Union is also a registered Union and having substantial number of workers as members. The 2nd respondent Labour Union entered into 18(1) Settlement with the writ petitioner Management, as they are convinced with the wage revision proposed by the Management and accordingly, they are ready to accept the benefits as well as agreed for higher production. At the out set, the members of the 2nd respondent Union agreed for the wage revision and signed the 18(1) Settlement and also agreed for increased production activity in the writ petitioner's factory.

4.The learned counsel for the petitioner admitted the fact that the 1st respondent Labour Union is having the majority members, as their membership ratio is approximately about 60% of the total employees working in the writ petitioner Management. The 1st respondent Union disagreed with the wage revision proposed by the writ petitioner Management and raised an industrial dispute, which is now pending before the Industrial Tribunal at Chennai.

5.The learned counsel for the writ petitioner further states that the Management filed an interlocutory application to frame a preliminary issue as to whether the Settlement dated 21.01.2019, entered into between the Management and the 2nd respondent is fair and pass an award in terms of the Settlement dated 21.01.2019. In this context, the learned counsel for the petitioner contended that when a settlement is already entered into between the Management and the Labour Union, then the Labour Tribunal is empowered to adjudicate the said settlement as a preliminary issue. Once the fairness of a settlement is accepted, then the said settlement, wage revision and other terms and conditions shall be extended to all other employees, who all are working with the writ petitioner Management.

6. To substantiate the said contention, the learned counsel for the writ petitioner cited various judgments and mainly he relied upon a judgment of a learned Single Bench of this Court in the case of Management of EID Parry (India) Ltd., vs. Presiding Officer, Labour Court and Anr., in W.P.No.6625 of 2002 dated 18.11.2004 wherein the following observations are made in paragraphs 5, 6 and 8, which read as follows:-

"5. In support of his argument, the learned counsel for the respondent relied upon a decision of the Supreme Court in D.P. Maheswari v. Delhi Administration and Ors, AIR 1984 SC 153 : (1983) 4 SCC 293. In this case the Supreme Court has deprecated the practice of invoking the provision of Articles 226 and 136 on a preliminary issue raised before the Labour Court and orders passed thereon. According to the learned counsel for the respondent, this is only a preliminary issue whether the award has to be passed or not.

6. Considering the entire facts to the case, the argument that it is the preliminary issue that has been brought to this Court is not acceptable. The question here is as to whether the agreement is valid and whether the award can be passed on the basis of the agreement. Therefore, that is not a preliminary issue, but refers to the merits of the matter. Even though Labour Court has passed an award in the I.A., even then it does not amount to deciding the preliminary issue alone and therefore the decision relied upon by the learned counsel for the respondent does not have any relevance to the facts of (sic) the present case.

7.

8. He also referred to another decision of the Supreme Court in The State of Bihar v. D.N. Ganguli and Ors, AIR 1958 SC 1018 : (1959) 1 SCR 1191. In this case, the Supreme Court has held at p. 640 of LLJ:

"..... 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....."

He referred to another judgment of this Court in Management of Binny Ltd. v. Presiding Officer and Ors. (1999 (95) FJR 262) where this Court has held:

"It is not the object of the Industrial law that disputes should be kept alive for long number of years or the adjudication should be dilatory. If the parties themselves have reached the settlement, that is the best possible manner of resolving the disputes, and when it is the case pleaded before the Tribunal that all the workmen concerned have in fact, reached such settlements, such plea, should be examined, and should be decided before embarking on a long drawn enquiry, which may turn out to be wholly a futile exercise, if the settlement is found to be fair and legal. The Tribunal in the impugned order has lost sight of this object of industrial adjudication. Rules of procedure are designed to aid in achieving the substantive object of justice for the parties, as speedily as possible.

If the workmen, after knowing the contents of the settlement, had agreed to withdraw the disputes, it is not for the union to come in the way of such withdrawal and continue the dispute, for the benefit of the office-bearers of the union. The machinery provided under the Industrial Disputes Act is not for the benefit of unions. In situations, where their members have by separate settlements resolved their disputes with the management, it is not for the union to keep alive the dispute, which has been brought to an end by the workmen who may have chosen to enter into individual settlement with the management." Relying upon these judgments, the learned senior counsel submitted that this agreement was reached between all the parties to the dispute; the concerned workmen did not dispute this settlement; and it is only the union dispute the settlement. When the concerned workers themselves agree to the settlement, the union cannot object to such settlement. This argument of the learned senior counsel is acceptable. The Supreme Court has categorically held when there are settlement arrived at between the parties, the Court must be eager to accept such application and

pass the award in terms of the settlement, unless such settlement was arrived at by influence or coercion. In this case, the parties were aware as to what is the settlement they arrived at. According to them this is a gain in the bargain. Such settlement can be encouraged by all the Tribunal including the Labour Court."

Relying upon these judgments, the learned senior counsel submitted that this agreement was reached between all the parties to the dispute; the concerned workmen did not dispute this settlement; and it is only the union dispute the settlement. When the concerned workers themselves agree to the settlement, the union cannot object to such settlement. This argument of the learned senior counsel is acceptable. The Supreme Court has categorically held when there are settlement arrived at between the parties, the Court must be eager to accept such application and pass the award in terms of the settlement, unless such settlement was arrived at by influence or coercion. In this case, the parties were aware as to what is the settlement they arrived at. According to them this is a gain in the bargain. Such settlement can be encouraged by all the Tribunal including the Labour Court."

7. Relying on the judgment cited supra, the learned counsel for the writ petitioner reiterated that there is no prohibition to decide the issue as a preliminary issue, as the existence of 18(1) Settlement is not denied by the parties before the Tribunal as well as before this Court. When there is no denial of settlement, it would be beneficial to the employees also to decide the issue as a preliminary one so as to implement the settlement at the earliest possible and to avoid protraction of the litigation.

8. This Court is of an opinion that the argument advanced is undoubtedly fanciful. However, the basic concept of fairness and reasonableness, which are the touchstones of labour law must be complied with even while mooting out such points. In the absence of specific law, the fairness, reasonableness and the principles of natural justice are to be complied, which all are the guiding principles so as to arrive a conclusion. Even an iota of doubt is raised either on the side of the Management or

on the side of the workers, then the balancing approach would be to adjudicate all the issues in the industrial dispute, rather than decide a particular issue as a preliminary issue.

9. The learned Senior Counsel appearing on behalf of the 1st respondent raised a doubt that the wit petitioner Management may have an idea of divide and rule policy. In the event of implementing the minority settlement in respect of majority union, then the same will amount to unfair labour practice. The concept of collective bargaining cannot be taken away and the basic concept of majority should be protected, which will rule the situation. Under these circumstances, when a doubt is raised, then this Court cannot adjudicate the merits and demerits and allow the Tribunal to frame an issue as a preliminary one in respect of 18(1) Settlement entered into between the Management and minority union/2nd respondent. It is an admitted fact that if the majority union signed the settlement, then the Labour Court has no option, but to proceed with the settlement. However, all the parties have admitted that the settlement was signed by a minority union and therefore, the said settlement cannot be binding on the majority union and under these circumstances, a complete adjudication of the issues are imminent and necessary.

10. The learned counsel appearing on behalf of the 2nd respondent genuinely contended that their members are sandwiched between the attitude of the Management as well as the 1st respondent Union. The members of the 2nd respondent Union has approached the issues in a practical manner so as to ensure that the wage revisions are implemented without any prolongation or protraction of the litigation.

11. The learned counsel for the 2nd respondent reiterated that they have already agreed for the wage revision and for higher production and they are willing to work and earn other benefits as per the wage revision proposed and signed by the 2nd respondent Union by way of the 18(1) Settlement.

12. The contention of the 2nd respondent is that they should not be made to suffer on account of the attitude of the 1st respondent Union. Even the 2nd respondent Union accuses the 1st respondent by stating that they have not conducted elections for many number of years and the same prompted few workers to register a separate Union and accordingly, they have entered into a settlement with the Management.

13.The learned Senior Counsel for the 1st respondent disputed the said contention by stating that it is not as if the 1st respondent Union is not conducting elections. In fact, the 2nd respondent Union is supporting the Management and that is the reason why they are constrained to raise an industrial dispute and fight for the fair wage revision.

14.The learned counsel for the 2nd respondent made a submission that Section 2(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act") defines "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A".

15.Relying on the said definition, the learned counsel for the 2nd respondent contended that the Tribunal is empowered to pass an interim award. The passing of an interim award and the grievances in this respect are to be placed before the Tribunal for consideration and so far as the present writ petition is concerned, the question does not arise at all and therefore, this Court is not willing to provide any finding on this submission.

16.So far as the correctness of the order passed in I.A.No.8 of 2019 is concerned, the writ petitioner Management filed a petition to frame the preliminary issue as to whether, the settlement dated 21.01.2019 is fair and pass an award. The said petition was rejected by the Industrial Tribunal.

17.The question to be considered by this Court is that when a settlement under Section 18(1) of the ID Act is entered into between the Management and the 2nd respondent, minority Union, a decision in this regard by the Industrial Tribunal is in consonance with the established principles. The rule of majority is the rule of authority. This being the touchstone of the democracy, this Court cannot have a different opinion or view and as far as the settlement entered into between the Management and minority Union is concerned, it may be considered while deciding the issues in the industrial dispute and any priority or monopoly in respect of such settlement cannot be claimed by any of the parties to the dispute and the issues raised by the 1st respondent are also to be adjudicated on merits in order to arrive a fair decision in the interest of both the Management as well as the workman concerned.

18.Of course, this Court cannot brush aside the national interest and the interest regarding the industrial peace for the development of our great nation. The cooperation of the workers as well as the Management is of paramount important. It is not the idea of the Courts to kill the Managements or to deprive the workers from earning their rightful wages. A balancing and pragmatic approach is required. The greediness both on the side of the Management as well as on the side of the workers are to be considered by the respective parties by touching their conscious and by understanding the nature as well as the functioning of the factories, industries or other implications. Rights and duties are corresponding terms. When the rights are claimed by the workmen, equally they are bound to remind their duties. When constitutional rights are claimed by many persons by way of writ petitions, mostly they are not remembering the duties enumerated under Article 51A of the Constitution of India. Thus, the parties to the litigation should also consider these factors and allow the industrial developments to flourish in the interest of our great Nation, and to fight for their rightful claims.

19.Thus, this Court is of an opinion that fighting for the rights are the fundamental rights and also the duties enumerated must be remembered in the interest and for the development of our great nation. The writ petitioner as well as the 1st respondent Union are also requested to keep all these principles in mind and work for the welfare of the public for the interest of our country. This Court expect that all these disputes are to be resolved by mutual negotiations and as rightly pointed out by the respective learned counsel that in the event of multiplicity of litigation in this regard, it may take another 25 or 30 years, which may not be meaningful or useful to the workers to get their rights fructified.

20.Under these circumstances, this Court has no hesitation in coming to the conclusion that there is no perversity or infirmity in respect of the order passed by the Industrial Tribunal in I.A.No.8 of 2019 dated 06.03.2019. However, all the grounds raised by the writ petitioner in the present writ petition as well as by the respondents Union shall be considered by the Industrial Tribunal and accordingly, the industrial dispute is to be decided on merits and in accordance with law as expeditiously as possible.

21.The learned counsel for the writ petitioner made a submission that the Industrial Tribunal listed the matter for final arguments on 30th October, 2019 and as per the earlier

orders of this Court, the industrial dispute is to be disposed of on or before 31st October, 2019.

22.In view of the orders passed in the present writ petition today (25.10.2019), the time granted for the disposal of the industrial dispute is extended till 15.11.2019. Thus, the Industrial Tribunal is directed to provide opportunity to all the respective parties and dispose of the dispute on or before 15.11.2019.

23.The Industrial Tribunal is directed to decide all the issues based on the materials as well as the evidences and uninfluenced by the observations made in this writ petition.

24.Accordingly, this writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
Ranipet Labour Union,
11, Mahatma Gandhi Road,
Ranipet-632 401, Vellore District.

2.The Secretary,
Roca Ranipet Labour Union,
Registration No.1581/VLR,
No.13 A, Ambedkar Street,
Navalpur, Vellore District.

+1 cc to M/s.Balan Haridas,Advocate Sr.No. 89737

+1 cc to M/s.T.S.Gopalan & Co., Advocate SR.No.89475

AKM/31.10.19/9P- 5c /

W.P.No.25551 of 2019