

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.8238 OF 2016**

Bharatiya Kamgar Karmachari Mahasangh ...Petitioner

vs

M/s. Lloyds Line Pipes Ltd. And Anr. ...Respondents

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Mr. Anand R. Pai, i/b. G.S. Baj, for the Petitioner.

Mr. A.K. Jalisatgi, a/w. Mr. T.R. Yadav and Mr. Vaibhav Jagdale, for
Respondent Nos. 1 and 2.

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CORAM : S.C. GUPTE, J.

DATED: 21 FEBRUARY, 2020

ORAL JUDGMENT :

. Heard learned Counsel for the parties. Rule. Rule taken up
for hearing forthwith with consent of Counsel.

2. This writ petition challenges an order passed by the
Industrial Court at Thane on a complaint of unfair labour practice. The
complaint was filed by the Petitioner herein under Section 28, read with
items 2(a), 2(b) and 3 of Schedule II and items 5 and 9 of Schedule IV
of the MRTU and PULP Act, 1971 ("Act").

3. The controversy in the complaint concerns extending of
benefits and facilities of a settlement entered into by the Respondent
establishment with a rival union to the employees represented by the

complainant union. The complainant union was opposing the settlement originally. It claimed to be the recognised union of employees working with the Respondent establishment. It had submitted its own charter of demands, which, according to the Respondents, were far too higher than what was agreed in the settlement with the rival union. Its grievance before the Industrial Court was that though it was ready and willing to settle the issue of charter of demands with the Respondents, the latter was deliberately and intentionally refusing to discuss the matter and negotiate with the complainant union. It was submitted that in order to break the unity of workers and to keep its own puppet union, the management of the Respondent company had taken initiative for formation of a rival internal union, viz. Lloyd Kamgar Sanghatana, with the help of disgruntled elements among the workers and proceeded to enter into a settlement with this union (settlement of 22 August 2009). It was submitted by the complainant union that the complainant union had addressed a letter (letter dated 9 September 2011) requesting the Respondents to extend the benefits of the settlement to its members on par with the non-members, who were purportedly part of the internal union, namely, Lloyd Kamgar Sanghatana. It was the case of the complainant union that non-extension of these benefits to its members amounted to unfair labour practice. It was particularly submitted that the Respondents were agreeable to extend the benefits of the settlement to the members of the complainant union, only if they were agreeable to give an undertaking in a particular format. It was submitted that this insistence amounted to indulgence in an unfair labour practice. The union also invoked the principle of equal work equal pay for its claim of extension of the benefits of the settlement to its member-employees.

The complainant finally relied upon its letter addressed to the Respondents sometime before the filing of the complaint (letter dated 18 May 2012), wherein they had made a request to extend all benefits of the settlement of 22 August 2009 to their members against acceptance letters to be submitted by them and pay them arrears arising out of the settlement.

4. It is pertinent to note that pending hearing of the complaint, at the interim stage, an application was made on behalf of the complainant union that its members were ready and willing to accept the settlement and give up their demands. The Respondent management replied this application on the same day pointing out that it had no objection to extend all benefits of the settlement to the complainant union's members, provided they individually gave letters accepting the settlement in the prescribed format. It appears that the Industrial Court, on that very day, passed an order to the effect that individual employees should submit letters of acceptance in a prescribed format, whereupon benefits of the settlement would be made applicable to them. It appears that, in pursuance of this order, on the very next day, i.e. 22 September 2012, the Respondents displayed a notice calling upon the employees to submit applications in prescribed format for accepting settlement as per the order of the Industrial Court. This was followed by another notice displayed by the Respondents reiterating the earlier notice. Finally, on or about 19 October 2012, all members of the complainant union submitted their individual application forms. After these letters were submitted by individual members, benefits of the settlement were extended by the Respondents to the employees, but this extension was

only with effect from the date of their letters, i.e. 19 October 2012.

5. The only controversy, thus, which was left outstanding after the Respondents extended the benefits of the settlement to the member employees of the complainant union, pertained to the benefits, which were due to these employees upto 19 October 2012. The case of the Respondent management was that since the settlement was accepted by the members of the complainant union on 19 October 2012, benefits under the settlement were due and, accordingly, extended to them with effect from 19 October 2012. The Industrial Court did not accept the complainant union's case that these benefits ought to have been extended to its members for the whole of the period of settlement. That is the short controversy in the present petition.

6. Learned Counsel for the Respondents relies on the decisions of the Supreme Court and our Court in **ANZ Grindlays Bank Ltd. vs. Union of India**¹ and **Tata Consulting Engineers and Associates Staff Union vs. Tata Consulting Engineers**². Relying on these judgments, it is submitted that a settlement arrived at between the company and a representative union or employees of the company under Section 18(1) of the Industrial Disputes Act binds only those, who are party to the settlement; others cannot claim the benefits as of right. Learned Counsel submits that since these settlements were accepted by the members of the complainant union only on 19 October 2012, it is only from that date that they become parties to the settlement and claim its benefits only with effect from that date.

1 (2005) 12 Supreme Court Cases 738

2 2002 I CLR 701

7. Learned Counsel is not right there. In the very first place, it is important to note that when the offer was made by the Respondent establishment originally, i.e. before the complaint was filed, and also during the pendency of the complaint calling upon the concerned workmen to accept the settlement, what was communicated was that the settlement would be extended to them subject to their accepting the settlement. They were never put to notice that the settlement in that case would be made applicable to them only with effect from the date of their respective acceptances and not for the anterior period. Once this communication is accepted and acted upon by the workmen by issuing letters of acceptance, thereby changing their position to their detriment, it is not permissible to the Respondent employer to then go back on their communication and insist on a condition of making the settlement applicable only with effect from the date of their respective acceptances. That would not only be a travesty of justice but it would have the effect of undermining the very objective of industrial adjudication, which is maintenance of industrial peace. One set of workers, in that case, would get benefits of the settlement, whilst the others, though they eventually give up their case and accept the settlement, would be denied the benefits and that despite having put in the same work as the former did during the interregnum. That, I am afraid, is neither conducive to industrial peace nor consistent with justice, equity or good conscience. It would neither be in keeping with the policy behind industrial adjudication nor with the law of industrial adjudication.

8. The judgment of the Supreme Court in **ANZ Grindlays**

Bank's case (*supra*) concerned a reference made by the appropriate Government (Central Government) in that case. The reference concerned the binding nature or otherwise of a bipartite settlement between the employer, ANZ Grindlays Bank Limited, and the union, All India Grindlays Bank Employees Association ("Association"), vis-a-vis workmen, who were not members of the Association until these latter workmen accepted the settlement in a given format. The principal issue, which the court was concerned with in that case, was whether the Central Government was justified in making a reference to the Industrial Tribunal in the terms referred to above. The court observed that Section 2(k) of the Industrial Disputes Act defined an industrial dispute to mean "any dispute or difference between employers and employers, or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person". The court noticed that the definition had used the word "dispute", which postulated assertion of a claim by one party and its denial by the other. The court noticed that a plain reading of the reference made by the Central Government would show that it did not refer to any dispute or even an apprehended difference between the employer Bank and the other union, namely, All India Grindlays Bank Employees Federation ("Federation"), who was not even a party to the original settlement. The court observed that the reference did not refer to any demand or claim made by the Federation or its alleged refusal by the Bank. The court observed that, in such circumstances, it was not possible to hold that on account of the settlement arrived at between the Bank and the Association, any dispute or apprehended dispute had come into

existence between the Bank and the Federation. The action of the Bank in asking for a receipt from those employees, who were not members of the Association, but wanted to avail of the settlement amount, did not give rise to any kind of dispute between the Bank and the Federation. The court, in the premises, held that the reference made by the Central Government for adjudication by the Industrial Tribunal was wholly redundant and did not call for any adjudication. These observations have no relevance to the facts of our case. Learned Counsel for the Respondents refers to paragraph 10 of the order. Paragraph 10 contains a reference to the argument of learned Counsel for the Federation that insistence on a receipt in writing in order to avail of the benefits of the settlement was clearly illegal. This argument, learned Counsel submits, was not accepted by the Supreme Court. The court was of the view that the settlement, under sub-section (1) of Section 18 of the Industrial Disputes Act, bound the members of the Association and if the Bank were to extend the benefit of that settlement to the other employees, who were not members of the Association, and insist on a receipt to be given by them for availing the benefits, the Bank was perfectly justified in doing so; there was nothing wrong in the Bank asking for a receipt from these categories of employees. In the present case, the question is not whether, as the controversy now boils down to, the members of the complainant union gave an undertaking or accepted the settlement in any improper format. The controversy concerns the date, with effect from which benefits of the settlement should be extended to these members. The precise question is, does the condition that benefits would be extended to them subject to their acceptance of the settlement imply that such benefits would be extended only with

effect from the date of acceptance. That, as we have noted above, does not appear to have been either reflected in the offer made by the Respondents to the employees nor in the acceptance conveyed by the employees of the offer.

9. The judgment of **Tata Consulting Engineers** (supra) is also on a completely different point. It concerned the distinction between the provisions of Section 18(1) of the Industrial Disputes Act and of Section 18(2) of that Act. The argument before the court was that a company extending the benefits of a settlement to some workers but not to the others amounted to an unfair labour practice. Rejecting the workmen's contention, a Division Bench of our Court held that since this was a settlement under Section 18(1) of the Act, and not under Section 18(2) of the Act, it applied only to those, who were party to the settlement, and if the other workmen, who were invited to join the settlement after giving an undertaking, were to claim benefits under the settlement, they could not do so except after giving such undertaking. What the court held was that non-extension of benefits of the settlement to workmen, who were not parties to a settlement made under Section 18(1) of the Industrial Disputes Act, except after securing undertakings from them conveying their acceptance of the settlement, does not amount to an unfair labour practice. This is far from saying that, in our particular case, non-extension of benefits of a settlement for a particular period, despite having accepted the undertakings or acceptance of the workmen, does not amount to an unfair labour practice. The judgment of **Tata Consultancy Engineering**, accordingly, has no application to the facts of our case.

10. It is, lastly, submitted by Mr. Jalisatgi, learned Counsel for the Respondents, that the Respondents, in not extending the benefits of the settlement originally to the members of the complainant union, which was the basis of the complaint, could not be said to have committed any unfair labour practice. Learned Counsel submits that at that stage, the complainant union was insisting that the benefits should be extended to them without prejudice to their rights and submissions. Learned Counsel submits that the Respondent company, in not accepting this proposal, had not committed any unfair labour practice. That may be so. It is not, however, that whilst considering an unfair labour practice or its ramifications, the court has to be oblivious to later developments, which have occurred during the pendency of the complaint. If, as a result of these developments, the controversy has been narrowed down, then the court must focus its attention on this narrowed down controversy. In the present case, the original controversy concerned extension of the benefits of the settlement of 22 August 2009 to the workmen represented by the complainant union at all. That means, the whole of the period, namely, from the date of the settlement till disposal of the complaint, would have been covered by that complaint. As a result of the developments during the pendency of the complaint, that controversy has been narrowed down; it has been restricted only to the period between the date of the settlement and the date of the respective employees' acceptance of the settlement, i.e. 19 October 2012. The controversy before the court, in other words, now concerned only the anterior period, which was, anyway, part of the original complaint and if the court wrongly applied its mind to the facts of the case, or incorrectly assessed them to arrive at its finding, that

finding would certainly be amenable to judicial review by this court in its writ jurisdiction. That is precisely what the complainant union is attempting to do and, as we have noted above, they have a good case for seeking redressal of their limited grievance now left outstanding.

11. Accordingly, there is a clear merit in the petition. The impugned order of the Industrial Court cannot be sustained. The Industrial Court has committed gross error and illegality in exercise of its jurisdiction and this must be corrected by this Court in its writ jurisdiction.

12. Rule is, accordingly, made absolute and the petition is allowed by setting aside the impugned order of the Industrial Court and allowing the Petitioner Union's complaint and directing the Respondents to extend the benefits of the settlement of 22 August 2009 to the member employees of the Petitioner Union for the whole of the period for which these benefits were extended to the members of the rival union, namely, Lloyd Kamgar Sanghatana. It is, however, clarified that, as explained by the Respondents, having regard to page 40 of their compilation, out of seventy two workmen, who had given undertakings pursuant to the acceptance by the Petitioner union, ten have to be deleted. The Petitioner union does not contest this position.

13. The Respondents are directed to comply with this order within a period of six weeks from today vis-a-vis sixty two workmen represented by the Petitioner union.

14. Learned Counsel for the Respondents seeks stay of the

order. Since the Respondents have already been given six weeks' time to comply, there is no need for a separate stay. The application is rejected.

(S.C. GUPTE, J.)

Smita
Gonsalves

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