

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

932 WRIT PETITION NO.11193 OF 2022

**M/S NRB BEARINGS LIMITED THROUGH MANAGER
VERSUS
NEW PANTHER KAMGAR SENA FORBES HOUSING
SOCIETY AND ANOTHER**

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Advocate for Petitioner : Mr. Sachin V. Dankh
Advocate for Respondent No.1 : Mr. T.K. Prabhakaran h/f.
Mr. Ashutosh S. Kulkarni
Advocate for Respondent No.2 : Mr. Ajit Gaikwad – Patil

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CORAM : SANDEEP V. MARNE, J.

DATE : 24-11-2022

PER COURT :

. By this petition, petitioner has challenged the order dated 30.08.2022 passed by the Member, Industrial Court, Jalna thereby rejecting petitioner's application for disposal of reference in terms of memorandum of settlement dated 17.10.2021 entered into by it with All Marathwada Kamgar Union. The Industrial Court has proceeded to reject the application holding that the Tribunal is required to consider the reference and then pass an order.

2. It is an admitted position that the charter of demands raised by respondent no.1 have been referred to the Industrial Tribunal. During pendency of the reference, petitioner entered into

settlement agreement with respondent no.2, which appears to have majority of the workmen as its members. Petitioner sought disposal of the reference in terms of the memorandum of settlement. The application was opposed by respondent no.1. It appears that respondent no.1 does not desire to accept the terms of memorandum of settlement and would like to question the fairness of the terms of settlement.

3. In light of the above position emerging, the issue that arises is whether respondent no.1 can be permitted to raise the issue of fairness of the terms of memorandum of settlement in a reference relating to the charter of demands. This issue is answered by the Apex Court in **Jaihind Roadways vs. Maharashtra Rajya Mathadi Transport and General Kamgar Union and Others**, (2005) 8 SCC 51. The situation before the Apex Court was somewhat similar when during pendency of the reference before Industrial Tribunal, a memorandum of settlement was entered by the Management with one of the Unions. The tribunal however, proceeded to decide the reference and while doing so, also went into the issue as to whether the terms of settlement were fair and proper. The Apex Court has however, disapproved the course of action adopted by the Industrial Tribunal and has held that unless a specific reference is made on the

aspect of fairness of settlement terms, the same cannot be decided in a reference relating to charter of demands. Para nos.10, 12 & 13 of the judgment in **Jaihind Roadways** (*supra*) reads thus:

"10. Whether the settlement is tainted or unfair has to be decided if specific reference is made on that aspect. In *National Engineering Industries Ltd. v. State of Rajasthan and Ors.*, [2000] 1 SCC 371 at para 24 it was observed as follows:-

"24. It will be thus seen that the High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute and none apprehended which could be the subject-matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the Industrial Tribunal (sic dispute) which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended the appropriate Government lacks power to make any reference. A settlement of dispute between the parties themselves is to be preferred, where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award. Settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be the subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the Conciliation officer must be fair and reasonable. A settlement which sought to be impugned has to be scanned and scrutinized. Sub-sections (1) and (3) of section 18 divide settlements into two categories, namely, (1) those arrived at outside the conciliation proceedings, and (2) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has a limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has an extended application since it is binding on all

the parties to the industrial disputes, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter. A settlement arrived at in the course of conciliation proceedings with a recognized majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. The recognized union having the majority of member is expected to protect the legitimate interest of the labour and enter into a settlement in the best interest of the labour. This is with the object to uphold the sanctity of settlement reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. When a settlement is arrived at during the conciliation proceedings it is binding on the members of the Workers' Union as laid down by Section 18(3) (d) of the Act. It would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be, members of unions that are signatories to such settlement under Section 12(3) of the Act. The Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. "This principle of industrial democracy is the bedrock of the Act," as pointed out in the case of *P. Virudhachalam v. Lotus Mills*, [1998] 1 SCC 650. In all these negotiations based on collective bargaining the individual workman necessarily recedes to the background. Settlements will encompass all the disputes existing at the time of the settlement except those specifically left out."

12. We find that there was really no issue raised regarding fairness of the settlement. The Tribunal as well as the High Court came to conclusions without any material that settlements were not fair. As noted in *National Engineering case (supra)* and *State of Uttaranchal's case (supra)* there has to be a specific reference in this issue which was not there before the Tribunal and in any event no material was placed or any positive stand taken by any workman.

13. In the aforesaid background the orders of the learned Single Judge and the Division Bench of the High Court as well as that of the Tribunal are set aside. The Tribunal shall decide the matter within six months from the date of receipt of a copy of the judgment. If however, a competent person raises a dispute regarding fairness of the settlement within a month from today before the appropriate Government with a copy of our judgment the same shall be

examined within two months from the date the dispute is raised. It shall take a decision whether a reference is called for. We make it clear that we have not expressed any opinion on the desirability or otherwise of making the reference.”

- *Emphasis supplied.*

4. Thus, it appears to be a settled position of law that in a reference relating to charter of demands, the issue of fairness of terms of settlement cannot be gone into and a separate and specific reference is required to be made for the purpose of determining the issue of fairness of settlement.

5. In that view of the matter, in my view, the proceedings pending before the Industrial Tribunal in the form of Reference (IT) No.01/2021 have undergone a drastic change on account of entering into memorandum of settlement by Petitioner with Respondent No. 2. Though Respondent No. 1 is not satisfied with the terms of such settlement, it will not be able to challenge them in the pending reference. The issues in pending reference and new reference to be sought by Respondent No. 1 would intermingle. No purpose therefore would be served in keeping the present reference No. (IT) 1 of 2021 and it is appropriate for respondent no.1 to seek a reference from the appropriate government with regard to fairness of the memorandum of settlement dated 17.10.2021. Accordingly the following order is passed.

ORDER

(i) The Reference (IT) No. 1 of 2021 pending on the file of Industrial Court, Jalna shall stand disposed of. In the light of disposal of the reference itself, challenge to the order of the Tribunal dated 30.08.2022 shall also not survive.

(ii) Respondent no.1 will be at liberty to make a representation to the appropriate government to seek reference relating to (a) legality of memorandum of terms of reference dated 17.10.2021, (b) *locus standi* of respondent no.2 to enter into such memorandum of settlement and (c) fairness of the terms of the memorandum of settlement. If such a representation is made within two weeks from today, the appropriate government shall decide the same within a period of four weeks from the date of receipt of such representation.

(iii) In the event of reference being made on all or any of the above points, the Industrial Tribunal shall decide the same on its own merits without being influenced by its the order dated 30.08.2022 or by any of the observations made in the present order. In such a reference, if made, respondent no.1 shall be at liberty to raise all demands which are not covered by / omitted by the memorandum of terms of settlement.

6. With the above directions, the writ petition is disposed of.

(SANDEEP V. MARNE, J.)

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