

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE**

Present:
The Hon'ble Justice Raja Basu Chowdhury

WPO/1695/2022

**SONALI BANK EMPLOYEES' ASSOCIATION AND ANR.
VERSUS
THE UNION OF INDIA & ORS.**

For the petitioners : Mr. Debashis Banerjee, Advocate
For the respondent no.3 : Mr. Soumen Das, Advocate
Mr. Sourya Roy, Advocate
Heard on : 16th January, 2023
Judgment on : 31st March, 2023.

Raja Basu Chowdhury, J:

1. The present writ application has been filed, inter alia, praying for direction upon the respondent no.2 to initiate proceedings and lodged complaint before the concerned Court of Law against Sonali Bank Management, especially and more particularly against the respondent no.3, as per the provisions of Section 34(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the said Act") for the commission of offence punishable under Section 29 of the said Act.
2. It is the case of the petitioners that from time to time various bipartite settlements have been entered into between the registered trade unions

and the Management of Sonali Bank. In terms of one such settlement being the 4th Bipartite Settlement dated 17th September, 1984, as per clause 6 thereof, it had been agreed that in the matter of filling up post of Special Assistants in the Clerical Cadre, suitability be determined in member banks, having the post of Special Assistants, by interview of senior employees with weightage for qualification. The aforesaid settlement had, however, been amended from time to time and at present, 11th Bipartite Settlement is in force with the aforesaid existing term and the aforesaid settlement is binding on the parties.

3. The petitioners say that the members of the petitioners' union came to learn that as per Risk Mitigation Plan of Reserve Bank of India dated 31st March, 2018, Sonali Bank was required to formulate Staff Regulation/Employee rules by 31st July, 2019. Subsequently, Sonali Bank had prepared and formulated the Sonali Bank Limited, India Operation (Officers and Staff) Service rule, 2019 (hereinafter referred to as the said rules) and had submitted the same to the Reserve Bank of India, sometime in or about September, 2019 in compliance of the Risk Mitigation Plan of Reserve Bank of India.
4. It is in February, 2021 that the petitioners were served with a copy of the said rules. From a perusal of the said rules, it transpires that Sonali Bank, in derogation of the settlements already arrived at between the Unions and the Sonali Bank, *inter alia*, incorporated clauses in the said

rules which mentioned that the Bipartite Settlement/s shall not binding on the management of the bank.

5. Assailing the said rules, the writ petitioners had filed a writ application before this Court. By order dated 9th April, 2021 this Hon'ble Court, while entertaining the aforesaid writ application, was, *inter alia*, pleased to stay the said rules.
6. Subsequently, on or about 27th January, 2022, the General Secretary of the petitioners' union by a detailed representation addressed to the Deputy Chief Labour Commissioner (Central), Ministry of Labour, Office of the Deputy Labour Commissioner (C), Kolkata, had reported the violation of the existing policy and the settlements, so as to activate the office of the Deputy Chief Labour Commissioner for taking steps in terms of Section 34 of the said Act. Since, no steps have been taken by the Deputy Chief Labour Commissioner (Central), the respondent no.2 herein, the present writ application has been filed.
7. Mr. Banerjee, learned Advocate representing the petitioners by drawing attention of this Court to Section 29 of the said Act, submits that the said Act, *inter alia*, provides for a mechanism for punishing the guilty who commits breach of the terms of settlement or award which is binding on him under the said Act. Mr. Banerjee submits that although it was a duty cast upon the respondent no.2, to take cognizance of the complaint made by the petitioners and lodge complaint either with the

Metropolitan Magistrate or the Judicial Magistrate of the 1st class, no such complaint had been lodged.

8. By referring to Section 34 of the said Act, Mr. Banerjee submits that the said Act provides that the aforesaid complaint can only be lodged by the appropriate Government, and as such, the petitioners had approached the respondent no. 2, who is otherwise conferred with the authority of an appropriate Government, upon being delegated with the powers of an appropriate Government, in terms of Section 39 of the said Act.
9. The respondent no.2 ought to have taken cognizance of the complaints made by the petitioners and ought to have taken a *prima facie* view for lodging the complaint. The respondent no.2 has, however, not taken any steps in the matter. In support of his contention that it is for the appropriate Government to take steps in connection with the complaints, as regards breach of settlements or awards committed by individuals, he places reliance on a judgment delivered by the Hon'ble Supreme Court in the case of **Raj Kumar Gupta v. Lt. Governor, Delhi and Ors.**, reported in **(1997)1 SCC 556**. He also placed reliance on a judgment delivered by the Hon'ble Rajasthan High Court in the case of **M/s. Indian Hotel Company Ltd. Bombay and Anr. v. State of Rajasthan & Ors.**, reported in **RLW 1998(2) Raj. 959**.
10. *Per contra*, Mr. Das, learned Advocate, representing the respondent no. 3 submits that the present writ application is not maintainable. It is submitted that the aforesaid writ application suffers from non-joinder

and mis-joinder of parties. He says that Sonali Bank has not been made a party. The disputes raised by the petitioners do not constitute disputes within the meaning of Section 2(k) of the said Act. By referring to Page 200 of the writ application, he submits that the aforesaid 4th bipartite settlement deals with settlements, in relation to matters of filling up posts of Special Assistants in clerical grade. By referring to Page-195 of the writ application, being the complaint dated 27th January, 2022, he says that the petitioners have complained of failure to grant promotion from Special Assistant to JMG-S-I (Junior Management Grade Scale I). The aforesaid complaint made by the petitioners would, prima facie, demonstrate that the same is not on account of the failure to implement the bipartite settlement.

11. By referring to Section 4 of the said Act, he submits that the conciliation officer is only competent to engage in conciliation and has no authority or jurisdiction to adjudicate rival claims between the parties. In support of his aforesaid contention, he places reliance on an unreported judgment delivered by this Hon'ble Court in the case of **ABN Amro Bank N.V. v. Union of India & Ors.** in W.P. No. 1313 of 2003. By referring to Section 12(2) of the said Act, it is submitted that although, the conciliation officer has the power to bring about settlement of disputes and investigate disputes, such disputes must be in relation to the industrial dispute within the meaning of Section 2(k) of the said

Act, though the settlement may or may not be a settlement within the meaning of the said Act.

12. Mr. Das submits that from the complaint, it would appear that the same relates to grant or non-grant of promotion. According to him, grant or non-grant of promotion does not constitute a dispute within the meaning of Section 2(k) of the said Act. For a dispute to conform to the provisions of Section 2(k) of the said Act, the same has to be in relation to, either with employment or non-employment and no other dispute can be referred to the Tribunal for adjudication. In support of his aforesaid contention, he places reliance on a judgment delivered by the Hon'ble Supreme Court of India in the case of ***Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu & Ors.***, reported in **(2004) 3 SCC 514**.

13. Having heard the learned advocate appearing for the respective parties, I find that the principal question for determination in the instant application is whether the petitioners have the right to call upon the respondent no.2 to lodge a complaint against the respondent no.3 on account of commission of offence punishable under Section 29 of the said Act, and whether this Hon'ble Court can issue any direction upon the respondent no.2, to lodge or register any complaint either with the Metropolitan Magistrate or with the Judicial Magistrate of 1st Class, as the case may be.

14. I find that the present case has been filed by a registered Trade Union. Secretary to such Trade Union is also party to the aforesaid proceedings. I find that the petitioners' complain that despite the service conditions of the employees of Sonali Bank, at all materials times are covered by bipartite settlements, which are binding both on the Management of Sonali Bank and the employees of Sonali Bank, Sonali Bank Limited had framed the said rules. The petitioners say that the aforesaid rules framed by Sonali Bank and served on the petitioners in or about February 2021 are in conflict with the bipartite settlement.
15. Assailing the said rules the petitioners had filed a writ application before this Court. By order dated 9th April, 2021 this Hon'ble Court while entertaining the aforesaid writ application was, *inter alia*, pleased to stay the said rules. The parties have confirmed that the aforesaid order is valid and subsisting.
16. During pendency of the aforesaid writ application on 27th January, 2022 the petitioners having noticed breach of the settlement, had reported violation of settlement so as to activate the Office of the Deputy Chief Labour Commissioner, for taking steps in terms of section 34 of the said Act. Since the respondent no.2 did not take any steps this writ application had been filed. I find that the petitioners have claimed that the aforesaid 11th bipartite settlement is valid and subsisting. I also find that the said rules framed by the respondent no.3 had since been stayed by the Hon'ble Court. In such view of the matter, there cannot be any

dispute as to whether the aforesaid bipartite settlement is valid or not. Once, it is concluded that the bipartite settlement is valid and binding on the parties, the next question that arises for consideration is whether the settlement can be enforced. As rightly pointed out by Mr. Das appearing for the respondent no.3 that a Conciliation Officer has no power either enforce or adjudicate whether a settlement is a settlement within the meaning of the said Act. However, the contention of Mr. Das that only remedy of the petitioners in case of breach of settlement is to raise an Industrial Dispute, cannot be accepted.

17. Although Mr. Das learned advocate by placing reliance on Section 2 (k) of the said Act, has attempted to claim, by referring to the letter dated 27 January, 2022 issued by the General Manager of the petitioner no.1, that non-grant of promotion to JMG-S-I (Junior Management Grade Scale I) cannot constitute a dispute within the meaning of Section 2(k) of the said Act, since the JMG-S-I grade do not belong to workmen within the meaning of the said Act, I am, however, unable to accept the contention of Mr. Das as by letter dated 27th January, 2022, the petitioner no.2 had not chosen to call in question the steps taken by the respondent no.3 which are only limited to the grant of promotion to the post of JMG-S-I Grade. A perusal of the aforesaid letter would indicate that the petitioner no.2 had also questioned the promotion of other candidates by alleging breach of such bilateral settlement. By said letter the petitioner no.2 was, *inter alia*, pleased to further highlight that the

bipartite settlement is a settlement within the meaning of the said Act, and violation of such settlement as has been done by the Management of Sonali Bank tantamount to commission of offence under Section 29 of the said Act.

18. It is in the factual backdrop as aforesaid, the petitioner no.2 had called upon the respondent no.2, to lodge a complaint before the appropriate Court of Law having jurisdiction, against Sonali Bank Management as per the provisions of Section 34(1) of the said Act, for commission of offence punishable under Section 29 of the said Act.

19. Mr. Das has strenuously argued by placing reliance in the case of ***Workmen of Nilgiri Coop. Mkt. Society Ltd.***, (supra) and has tried to contend that it is only the disputes in relation to employment or non-employment, which are specified in the second and third schedule of the said Act, which partakes the character of an industrial dispute, for which a reference can be made, and no other dispute can be raised

20. I find that in the case at hand the petitioners have not attempted to raise an industrial dispute but intends to invoke the machinery available under the said Act, for punishing the guilty on account of commission of offence under Section 34 of the said Act. The aforesaid judgment does not in any way assist the respondent no.3. I, however, find that in fifth schedule of the said Act, various types of unfair labour practices on the part of the employer and the Trade Union of the employer has been illustrated. Under entry no. 13 of the fifth schedule, failure to

implement an award, settlement or agreement also constituted an unfair labour practice. Unfair labour practice which has defined Section 2(ra) of the said Act, means any of the practices specified in the fifth Schedule of the said Act. As such, non-implementation of the settlement also constitutes an unfair labour practice within the meaning of the said Act. I also find that a machinery has been provided under Section 39 of the said Act, for taking cognizance of an offence punishable under the said Act. Since, failure to implement an award constitutes unfair labour practice within the meaning of the said Act, it cannot be said that the petitioners had irregularly invoked the jurisdiction of the respondent no.2, especially when, it was for the respondent no.2, to not only take cognizance of an offence committed under section 29 read with section 34 of the said Act but also to lodge appropriate complaint in that regard, before appropriate Court having jurisdiction.

21. I find that it has been provided that no Court inferior to that of the Metropolitan Magistrate or the Judicial Magistrate of 1st Class shall try any offence punishable under this Act. Since, an offence complained of is punishable under this Act, I am of the view that a duty is cast on the respondent no.2, to examine whether such offence has been committed by the respondent no.3 and thereafter to lodge a complaint before the appropriate Court, if conditions for lodging such complaints stands fulfilled. Duty to lodge a complaint by taking cognizance of an offence, thus, cannot be said to be de hors the provisions of the said Act.

Although Mr. Das, by referring to an unreported judgment delivered by this Court in the case of **ABN Amro Bank N.V. v. Union of India & Ors.** (supra), has attempted to claim that in referring a dispute under Section 10 of the said Act or under Section 12(5) thereof, the appropriate Government does not function in a judicial or quasi-judicial capacity but it's functions are purely administrative and no adjudication takes place at that stage, I am of the view that such observations were made by this Court, in relation to a reference under Section 10 of the said Act, and not in relation to taking cognizance of an offence under Section 34 of the said Act.

22. I find that the Hon'ble High Court of Rajasthan has also while discussing about the authority and jurisdiction of appropriate Government to take cognizance of an offence under Section 34 of the said Act, has been, *inter alia*, pleased to observe as follows:

“23. In a case under Section 34(1) of the Act we should not over-sight the fact that in a case of industrial dispute the lis is between the management and the employee or management and the trade union. The appropriate government is required to interfere only to maintain industrial harmony and nothing else. The complaint to be filed before the learned Magistrate under the Act is by no means different from that of a private complaint filed by an individual under Section 200 of the Code of Criminal Procedure. The involvement of the appropriate government is necessary just to see that the industrial peace and tranquillity is not disturbed either by the

management or by the trade union. By enacting penal provisions, the aim of the Legislature is to ensure compliance of the provisions of the statute, i.e., that neither the employer nor the employee must adopt the unfair labour practice. If such provisions had not been enacted, there would have been very likelihood of filing frivolous complaints indiscriminately, which might ultimately affect the industrial peace. Therefore, the public policy requires that appropriate government may apply its mind and satisfy itself before it authorises a person to file complaint and the purpose of Legislature to enact Section 34(1) of the Act is only to ensure non-filing of frivolous complaints and nothing more. Therefore, the authorisation under Section 34 cannot be put at par to the sanction which the appropriate government is required to exercise in granting or refusing sanction where sanction is a condition precedent to filing of a complaint. The discretion is just that of a private person who may file a complaint on pure ground of expediency and nothing else. (Vide Ram Das v. K.M. Sen (19)). The reason being that there are two separate provisions in the Code of Criminal Procedure which provide for according the sanction. Section 196 provides that no Court shall take cognizance of any offence punishable under certain Sections unless complaint is made by order of or under authority from the State Government or some officer empowered by the State Government in this behalf. The other provision, i.e., Section 197, provides that when certain public servant are accused of any of offence alleged to have been committed by them while acting or purporting to act in discharge of the official

duty, no Court shall take cognizance of such offence except with the previous sanction of certain authorities. Putting the professions consecutively in the Code require to draw inference that both the provisions must mean two different things and must be made applicable in two different situations. When an individual person files a complaint, he certainly exercises a certain amount of discretion and it is this discretion which is to be exercised while according or refusing authorisation under Section 34(1) of the Act.

24. *When the order of sanction refers to relevant material though it does not refer to the contents of the same, and the order is passed after issuing show cause notice to the petitioners and on a reply submitted by them, and even thereafter it will still be open to the party to agitate before the Court during the course of prosecution that the sanction accorded is invalid. In such a situation, the provisions of Articles 226 and 227 of the Constitution cannot come to the rescue of the petitioners. In such a case if the petition is entertained, it will not only lead to delay in the prosecution but it will, also, lead to delay in the implementation of the Settlement and the execution of the mandatory provisions of the Act. (Vide F.K. Menzlin v. B.P. Prem Kumar (20)).”*

23. Having regard to the aforesaid and the provisions of the said Act, I am of the view that public policy also requires the appropriate Government to apply its mind and take a decision as regards commission of an offence under the said Act, especially when the alleged

commission of offence falls within the meaning of unfair labour practice as defined under Section 2(ra) of the said Act. In view thereof, there shall be an order directing the respondent no.2 to take a decision on the basis of the communication dated 27th January, 2022 and the reminder dated 14th March, 2022, for the said respondent no.2, to take steps in the matter as it may deem fit and necessary. Needless to note that respondent no. 2 while taking steps, shall be guided by the observations made in this order.

24. With the aforesaid directions and observations, the writ application is disposed of.
25. There shall be no order as to costs.
26. Urgent certified copy of this order and judgment, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with all necessary formalities.

(RAJA BASU CHOWDHURY, J.)