



W.P.No.18692 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	10.04.2023
Pronounced on	19.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.18692 of 2022
and
W.M.P.No.18055 of 2022

Ranipet Roca Labour Union,
Rep. by its Secretary,
Regn.No.1591/VLR
No.13A, Ambedkar Street,
Navalpur, Vellore District.

...Petitioner

Vs.

1.The Management of
Roca Bathroom Products Private Limited,
Mahatma Gandhi Road,
Ranipet – 632 401, Vellore District.

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

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the concerned records from the Industrial Tribunal, Tamil Nadu, Chennai – 600 104 dated



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01.07.2022 in I.A.No.184 of 2019, Computer I.A.No.08 of 2019 in I.D.Nos.03 & 29 of 2013 as illegal, arbitrary and contrary to law and consequently direct the Industrial Tribunal, Tamil Nadu, Chennai to pass interim award in terms of the Settlement dated 21.01.2019 insofar as members of the petitioner Union.

For Petitioner : Mr.Balan Haridas

For Respondents

R1 : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.

R2 : Mr.V.Prakash
Senior Counsel
for Ms.K.Sindhuja

ORDER

With the consent of both the parties, this Writ Petition is taken up for final disposal.

2. For consideration of various demands raised by the second respondent herein, an Industrial Dispute in I.D.No.3 of 2013 was raised before the Industrial Tribunal, Chennai. Pending the Industrial Dispute, the Management claims to have entered into a settlement under Section 18(1) of the Industrial Disputes, Act, 1947, (hereinafter referred to as 'the Act') on 21.01.2019, with a majority of the members of the second respondent Trade



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Union. These members, who had entered into such settlements, are now members of the petitioner Trade Union, who was impleaded in the main dispute.

3. In this background, the Management had filed an interim application in I.A.No.08 of 2019, seeking for passing of an award in terms of the settlement and orders came to be passed on 06.03.2019. The Management had challenged this order before this Court in W.P.No.25551 of 2019 and by an order dated 25.10.2019, the learned Single Judge had observed that since the second respondent had entered into a settlement with the Management, it would be open to them to seek for an interim award in terms of the settlement. The said order was taken on an intra-court appeal in W.A.No.3881 of 2019. The Hon'ble Division Bench of this Court had partly allowed the appeal, by setting aside certain observations made by the Industrial Tribunal, in its order dated 06.03.2019. In this background, the first and the second respondents had filed a joint memo before the Industrial Tribunal, seeking for an interim award of the settlement dated 21.01.2019, along with a copy of the settlement and a list of 114 members of the second respondent Union.



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4. The Industrial Tribunal had rejected the application in I.A.No.184 of 2019 (Computer I.A.No.08 of 2019) on 01.07.2022, by observing that a part adjudication of the dispute on the basis of the settlement entered into between the newly impleaded party and the Management is not justifiable and would dilute the further proceedings in the matter and accordingly had proceeded with the main Industrial Dispute. Challenging this interim application, the present Writ Petition has been filed.

5. The learned counsel for the petitioner Union submitted that as on date, 194 out of the total 229 workmen have signed the settlement with the Management and that these members of the Union are happy with the terms of settlement dated 21.01.2019, under Section 18(1) of the Act. It is also his submission that the members of their Union do not wish to continue with the litigation and therefore, the Industrial Tribunal ought to have passed an interim award, thereby releasing their members from the Industrial Dispute.

6. The learned counsel appearing for the first respondent Management also submitted that out of 229 of their workmen, 194 workers have signed the settlement. It is his submission that since the main dispute is with regard to



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the charter of demands and the majority of the members have settled these demands, they need not be a party to the main Industrial Dispute and since the term "Award", as defined under the Act, would also include an interim award, the Industrial Tribunal ought to have accepted the application filed by the second respondent Union and passed an interim award.

7. The learned Senior Counsel appearing for the second respondent Trade Union disputed the claim of the petitioner Union that a majority of the members have signed the settlement with the Management. According to him, the settlement itself is a product of unfair labour practice. By drawing attention of this Court to the order passed in W.A.No.3881 of 2019, dated 19.12.2019, he submitted that the Hon'ble Division Bench had disapproved the reason of the learned Single Judge that an adjudicatory forum is bound by the terms set out only by a majority of the workmen. In view of the observations made in the Writ Appeal that the primary duty of the Tribunal is to test the fairness of the terms of settlement, such terms are required to be tested and therefore, the claim for passing of an interim award is not permissible. In support of such a contention, the learned Senior Counsel also placed reliance on a decision of the Hon'ble Supreme Court in the case of



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Management of Hotel Imperial, New Delhi and others Vs. Hotel Workers'

Union reported in ***AIR 1959 SC 1342.***

8. The power of the Industrial Tribunal to pass an interim award is incorporated under Section 2(b) of the Act, in connection with determination of any Industrial Dispute or of any question relating thereto. Such powers are not disputed by any of the parties herein.

9. The main ground raised by the petitioner Union is that since their members have signed an amicable settlement with the Management under Section 18(1), touching upon the demands, which are the subject matter of the main Industrial Dispute pending before the Industrial Tribunal, they no longer intend to be a part of the dispute itself and therefore seek for passing of an interim award.

10. The core objection of the second respondent Trade Union is on the basis of the order passed by the Hon'ble Division Bench in W.A.No.3881 of 2019, dated 19.12.2019. The relevant portion of the judgement in the said Writ Appeal reads as follows:-



"49. The argument on behalf of the first respondent that the majority union is the sole bargaining agent to the exclusion of all other workmen who form the minority group, may be binding between the workmen themselves, but the same cannot preclude the adjudicatory forum of the Tribunal to consider the fairness or otherwise of a settlement in a wage revision matter, as that would amount to taking away the authority of the Tribunal to settle an industrial dispute. The adjudicatory forum has been provided for the benefit of the workmen and for a healthy existence of an industrial atmosphere, where the industry survives and the workmen thrive.

50. We, therefore, partly allow this appeal setting aside the observations made by the Industrial Tribunal in the order dated 6.3.2019 to the effect that the settlement dated 21.1.2019 cannot be looked into as it has not been signed by the office bearers of the majority union. We also do not approve of the reasoning of the learned Single Judge that an adjudicatory forum is bound by the terms set out only by a majority of the workmen. This, in our opinion, cannot be done without testing the fairness of the terms of the settlement, which is the primary duty of the Tribunal. The Tribunal can



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however in it's discretion decline to decide the issue as a preliminary issue and can adjudicate all issues finally. The Tribunal may proceed to dispose of the matter finally in the light of the observations made herein above, preferably within one month from today."

11. By placing reliance on the aforesaid observations of the Hon'ble Division Bench, the learned Senior Counsel for the second respondent submitted that it is the duty of the Tribunal to consider the fairness or otherwise of a settlement in a wage revision matter and without conducting such a test, an interim award cannot be passed.

12. What the Hon'ble Division Bench did not approve in the aforesaid order is the observation of the learned Single Judge that a adjudicatory forum is bound by the terms of settlement made by a majority of workmen. This Court is also in conformity with such findings, in view of the fact that there is no provision in any law to such a proposition. The Hon'ble Division Bench had also held that in order to bind the terms of settlement on the workmen, the primary duty of the Tribunal would be to test the fairness of the terms of settlement. There cannot be any quarrel over this proposition also.



13. The larger question is as to whether a workman can be forced to remain in a dispute to which he has amicably settled with the management and who no longer intends to be a part of the main Industrial Dispute?

14. When the main Industrial Dispute was raised, the second respondent was the only Labour Union, who had raised a charter of demands touching upon the wage revision. Pending the dispute, it is claimed that a majority of the members of the second respondent Union had resigned from their primary membership of the Trade Union and had joined the petitioner Trade Union, since they had either signed a settlement with the Management or intended to settle the dispute with them.

15. The issue as to whether the settlement, which the Management claims to have settled with the majority of its workmen, is binding on the members of the second respondent Trade Union, is not the question before the Industrial Tribunal. On the other hand, the dispute relates to certain demands of wage revision raised by the second respondent Trade Union with the Management. If the Industrial Tribunal is to pass an award based on the claim petition and if the Management is to take a stand that the terms of



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settlement arrived by them with a majority of the workmen would bind the members of the second respondent Union, then in such circumstance, the primary duty of the Industrial Tribunal would be to test the fairness of the terms of such a settlement, as held by the Hon'ble Division Bench of this Court in W.A.No.3881 of 2019. But, for such a purpose, the second respondent cannot claim that the members of the petitioner Union should continue to be a part of the adjudication proceedings, even though they had resigned from their primary membership of the second respondent Trade Union and signed a settlement with the Management.

16. When a workman has amicably resolved the dispute with the Management, which is the subject matter of adjudication before an Industrial Tribunal, it would be well within his powers to walk out of the adjudication proceedings. There is no contrary findings on this proposition by the Hon'ble Division Bench. The Hon'ble Division Bench had only made an observation that the Tribunal can exercise its discretion to decline a preliminary issue and can adjudicate all issues finally. Thus, there was no positive pronouncement by the Hon'ble Division Bench, refraining the Industrial Tribunal to pass a preliminary award.



17. The learned Senior Counsel for the second respondent drew attention to the decision of the Hon'ble Supreme Court in ***Hotel Imperial's case (supra)***, to distinguish an interim relief from an interim award and placed reliance on the following extract:-

"21. After a dispute is referred to the tribunal under Section 10 of the Act, it is enjoined on it by Section 15 to hold its proceeding expeditiously and on the conclusion thereof submit its award to the appropriate Government. An "award" is defined in Section 2(b) of the Act as meaning "an interim or final determination by an Industrial Tribunal of any industrial dispute or of any question relating thereto". Where an order referring an industrial dispute has been made specifying the points of dispute for adjudication, the tribunal has to confine its adjudication to those points and matters incidental thereto; [Section 10(4)]. It is urged on behalf of the appellants that the Tribunal in these cases had to confine itself to adjudicating on the points referred and that as the question of interim relief was not referred to it, it could not adjudicate upon that. We are of opinion that there is no force in this argument, in view of the words "incidental thereto" appearing in Section 10(4). There can be no doubt that if, for



example, question of reinstatement and/or compensation is referred to a tribunal for adjudication, the question of granting interim relief till the decision of the tribunal with respect to the same matter would be a matter incidental thereto under Section 10(4) and need not be specifically referred in terms to the tribunal. Thus interim relief where it is admissible can be granted as a matter incidental to the main question referred to the tribunal without being itself referred in express terms.

22.The next question is as to how the tribunal should proceed in the matter if it decides to grant interim relief. The definition of the word “award” shows that it can be either an interim or final determination either of the whole of the dispute referred to the tribunal or of any question relating thereto. Thus it is open to the tribunal to give an award about the entire dispute at the end of all proceedings. This will be final determination of the industrial dispute referred to it. It is also open to this tribunal to make an award about some of the matters referred to it whilst some others still remain to be decided. This will be an interim determination of any question relating thereto. In either case it will have to be published as required by Section 17. Such awards are however not in the nature of interim relief for they



decide the industrial dispute or some question relating thereto. Interim relief, on the other hand, is granted under the power conferred on the tribunal under Section 10(4) with respect to matters incidental to the points of dispute for adjudication."

18. In the aforesaid extract, the Hon'ble Supreme Court had found that it would be open to the Industrial Tribunal to pass an award about some of the matters referred to it, while some other still remain to be decided, thereby approving the interim determination of any question relating thereto. The application of the petitioner herein for passing of an interim award is not prohibited either under the Act or in the aforesaid decision. On the other hand, the case relied upon by the learned Senior Counsel for the second respondent would support the petitioner's case also, since it approves the grant of an interim award.

19. There is yet another aspect of the matter. It is claimed by the Management that about 194 out of the 229 workers have signed the settlement and have also received the monetary benefits arising out of the terms of settlement. Assuming that the Industrial Tribunal is allowed to



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adjudicate the Industrial Dispute finally, without passing any preliminary award and the fairness of the terms of settlement is tested in favour of the Management, there would not be any issues that may affect the workers who have already signed the settlement. On the other hand, if the fairness of the terms of settlement is held against the Management and an award is passed, which reduces the benefits of settlement that has already been signed by the workers, the same would seriously prejudice these workers who have already expressed their intention to come out of the adjudication proceedings before the Tribunal.

20. This, in my view, should not be permitted. As stated earlier, the Industrial Tribunal must test the fairness of the terms of settlement, for the limited purpose of making it applicable or otherwise to such of the workers, who have not signed the settlement only. For this limited purpose, such a test requires to be conducted.

21. This apart, the members of the petitioner Union are not the members of the second respondent Union and the Industrial Tribunal may not have the authority to make its award applicable to the workers who have



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already signed the settlement touching upon the dispute and are now members of the petitioner Union and who do not wish to continue with the proceedings. Since the Act provides for passing of an interim award also, the claim of the petitioner Union for such a preliminary award is justifiable.

22. The Industrial Tribunal, while rejecting the application seeking for passing of an interim award, had made an observation that such a statement would dilute the further proceedings before it. Such an observation may not be correct. The second respondent is still fighting for the cause of their members and the claim before the Industrial Tribunal would still survive, insofar as it relates the members of the petitioner Union. In this background, the impugned order, rejecting the petitioner's request for passing an interim award, cannot be sustained.

23. For all the foregoing reasons, the impugned order of the Industrial Tribunal, Tamil Nadu, Chennai, passed in I.A.No.184 of 2019, Computer I.A.No.08 of 2019 in I.D.Nos.03 and 29 of 2013, is quashed. Consequently, the Industrial Tribunal, Chennai, is called upon to pass an interim award in I.A.No.184 of 2019, Computer I.A.No.08 of 2019 in I.D.No.03 of 2013,



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insofar as the members of the petitioner Union are concerned, before passing of the final award, within a period of four weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

19.04.2023

Index:Yes
Neutral Citation:Yes
Speaking order
hvk

To

- 1.The Industrial Tribunal,
Tamil Nadu,
Chennai - 600 104.
- 2.The Management of
Roca Bathroom Products Private Limited,
Mahatma Gandhi Road,
Ranipet – 632 401,
Vellore District.
- 3.The Secretary,
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11, Mahatma Gandhi Road,
Ranipet – 632 401,
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M.S.RAMESH,J.

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PRE-DELIVERY ORDER MADE IN

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