



WEB COPY

W.A.No.1096 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.No. 1096 of 2023
and
C.M.P.Nos.11122 & 22377 of 2023

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

...Appellant

Vs.

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

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

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the
order dated 19.04.2023 made in W.P.No. 18692 of 2022.



For Appellant : Mr.V.Prakash, Senior Counsel
for Mr.T.Ramkumar
For Respondent : Mr.Mr.Balan Haridass for R1
Mr.Anand Gopalan for
M/s.T.S.Gopalan & Co. for R2

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The Trade Union which claims to be representing a section of the workers of the 2nd respondent Management is on appeal.

2. There was a wage settlement between the workers and the management, which expired in the year 2010. The appellant Union raised a charter of demands and the respondent Management raised certain issues regarding the work culture of the workmen. Both were referred to the Conciliation Officer. Since conciliation failed, two industrial disputes, one in ID.No.3 of 2013 regarding the charter of demands made by the workmen and another in ID.No.29 of 2013 regarding the work culture made by the Management went before the Industrial Tribunal.



3. When matters were pending before the Industrial Tribunal, the 1st respondent / Union was formed and it entered into a wage settlement with the Management on 21.01.2019. The Management wanted the said settlement to be approved by the Industrial Tribunal. The Tribunal dismissed it on the ground that the settlement was with the minority Union and it did not represent the view of the majority of the workers. This was subject matter of challenge in W.P.No.25551 of 2021. The said Writ Petition also came to be dismissed on 25.10.2019, upholding the conclusion of the Industrial Tribunal.

4. Aggrieved, the Management preferred an appeal in W.A.No.3881 of 2019. The primary contention in the Writ Appeal on behalf of the Management was that the settlement dated 21.01.2019 having been entered into with a Union the Industrial Tribunal will have to decide whether such settlement is fair or not. The question whether it is with a minority union or otherwise cannot be gone into. The Hon'ble Division Bench after elaborate discussion of the law on the question concluded that the Industrial Tribunal was to consider only the fairness or otherwise of the settlement in a wage



revision matter and whether settlement is with the minority or majority will not really matter. On such conclusion, the Writ Appeal was partly allowed and the Division Bench held as follows:-

"50. We, therefore, partly allow this appeal setting aside the observations made by the Industrial Tribunal in the order dated 06.03.2019 to the effect that the settlement dated 21.01.2019 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 one without testing the fairness of the terms of the settlement, which is the primary duty of the Tribunal. The Tribunal can 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."

5. The said order of the Division Bench was subject matter of challenge in SLP.No.4851 of 2020. However, the same was withdrawn on 14.08.2024 with liberty to raise the question of law at appropriate time. In the interregnum, the Management filed I.A.No.196 of 2021 seeking to pass



an award in terms of the settlement dated 21.01.2019. The 1st respondent Union filed an application in I.A.No.184 of 2019 seeking an interim award in terms of the settlement only in so far as the members of the 1st respondent Union. I.A.No.196 of 2021 along with connected applications was disposed of by the Tribunal on 01.02.2022. The Tribunal declined to record the settlement and pass an award in terms of the settlement and held that the fairness of the settlement will have to be gone into in the industrial dispute that has been pending. This order of the Tribunal dated 01.02.2022 was challenged by the Management before this Court in W.P.No.3821 of 2022.

6. This Court after referring to the conclusion of the Hon'ble Division Bench in the order made in W.A.No.3881 of 2019 dismissed the same, affirming the conclusion of the Tribunal that all issues should be dealt with together. Immediately thereafter, a Writ Petition was filed before this Court by the Union in W.P.No.6178 of 2022 challenging the very same order dated 01.02.2022 on the presumption that the application filed by the 1st respondent Union in I.A.No.184 of 2019 was also dismissed. This Court found that I.A.No.184 of 2019 was not disposed of by order dated



01.02.2022 and directed the Industrial Tribunal to dispose of I.A.No.184 of 2019. Thereafter, the Tribunal took up I.A.No.184 of 2019 and by order dated 01.07.2022 dismissed the same, on the conclusion that there cannot be an interim award in respect of the some of the workers only. The Tribunal also referred to the judgment of the Hon'ble Division Bench particularly, Paragraph 50 extracted above and held that the discretion to pass an interim awards have been vested in the Tribunal and the Tribunal does not deem it fit to pass an award in the circumstances of the case. This order was subject matter of challenge in W.P.No.18692 of 2022.

7. The Writ Court held that there can be an interim award in respect of the settlement in so far as the members of the 1st respondent are concerned. On the said premise, the Writ Court allowed the writ petition, directing the Industrial Tribunal to pass an interim award in I.A.No.184 of 2019 in terms of the settlement in so far as the members of the 1st respondent Union are concerned. It is this order, which is subject matter of challenge in this Writ Appeal.

8. We have heard V.Prakash, learned Senior Counsel appearing for



Mr.T.Ramkumar for the appellant, Mr.Balan Haridass, learned counsel appearing for the 1st respondent Union and Mr.Anand Gopalan, learned counsel appearing for the 2nd respondent Management.

9. Mr.V.Prakash, learned senior counsel appearing for the appellant would vehemently contend that the order of the Writ Court would lead to an anomalous situation where there would be an award on the basis of a settlement in respect of some of the employees of the very same Management and the Labour Court would examine the fairness of the very same settlement in respect of certain other employees who are not members of the 1st respondent Union.

10. According to the learned Senior Counsel for the appellant, there cannot be two different wage patterns for the same employees under the same Management. He would also submit that no doubt Section 10(b) of the Industrial Disputes Act permits the Tribunal to pass an interim award, such interim award cannot be final in nature in respect of some of the employees and a question regarding fairness of the very same settlement will be decided in the final award.



WEB COPY

11. The learned Senior Counsel for the appellant would also draw our attention to the judgments of the Hon'ble Supreme Court in *Amalgamated Coffee Estates Ltd. and Others Vs. Their Workmen* reported in *1965 (10) FLR 328*, *Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others* reported in *(1976) 4 SCC 736* and the judgment in *Sirsilk Ltd. Vs. Government of Andhra Pradesh and Another* reported in *AIR 1964 SC 160*.

12. According to the learned Senior counsel for the appellant, once a wage dispute is made a subject matter of an industrial dispute, even if agreement is reached between the workers and the Management subsequently, the Labour Court or the Tribunal will have the power to test the fairness of such settlement unless the parties chose to withdraw the wage dispute. The question as to whether the settlement is with the majority of the employees or minority of the employees does not matter. The learned Senior Counsel would also admit that if an interim award is passed on the basis of the settlement arrived at between the Management and the 1st



respondent Union in respect of the members of the 1st respondent Union, if the said settlement is found to be unfair by the Industrial Tribunal thereafter, at the final hearing of the ID, the question as to whether it would bind the members of the 1st respondent Union would again loom large. Therefore, without testing the fairness of the settlement, the Industrial Tribunal cannot affix its seal of approval on the settlement entered into, particularly, pending a wage dispute.

13. Contending contra, Mr.Balan Haridass, learned counsel appearing for the 1st respondent Union would submit that its members have accepted the settlement and therefore, the Tribunal cannot say that the settlement is fair or not vis-a-vis, the members of the 1st respondent Union and therefore, he is entitled to an award on basis of the settlement entered into. He would also put forth a second line of argument stating that party to a litigation can chose to walk out of the litigation at any time and therefore, he is entitled to enter in to a settlement with the Management and walk out of the industrial dispute.

14. Supporting the contention of Mr.Balan Haridass, Mr.Anand



Gopalan, learned appearing for the Management would submit that since the 1st respondent Union had entered into a settlement, if an award is passed in terms of the settlement, it would only be binding on the members of the 1st respondent Union. The fairness of the settlement vis-a-vis the members of the appellant Union can be decided by the Labour Court. The learned counsel would also submit that very object of the industrial jurisprudence is to achieve industrial peace and therefore, resolution of disputes by settlement alone should be encouraged. We have heard the rival submissions.

15. Let us advert to the provisions of the Industrial Disputes Act which may have a bearing on the issue. Section 2(b) defines an award. It says it includes an interim award made under Section 10 of the Act. Section 18 relates to the binding nature of the settlements and awards and the same reads as follows:-

"18. Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) [Subject to the provisions of sub-section (3), an



arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]

[(3)] A settlement arrived at in the course of conciliation proceedings under this Act 3 [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or 4 [an award 5 [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, 6 [arbitrator,] 7 [Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."



WEB COPY

16. There are different methods by which a settlement is arrived at,

(i) a settlement arrived at by negotiations between the employer and the workmen,

(ii) a settlement arrived at in the course of conciliation proceedings with the assistance of a Conciliator.

(iii) A settlement arrived at in the course of an arbitration proceedings where there is an arbitration notified under Sub-section 3-A of Section 10-A.

(iv) An award of the Labour Court or an Industrial Tribunal or a National Tribunal.

Section 18(i) makes an award arrived at a negotiation between the employer and the workmen alone binding on the parties to the agreement hence, the workmen who were not parties to the settlement are not bound by the settlement entered into between the employer and the workmen. Sub-section 3 provides for the binding nature of the settlements arrived at otherwise and awards of the Labour Court or the Tribunal. It states that such settlement shall be binding on all parties to the industrial dispute and Clause 3 of Sub-section 3 of Section 18 makes it clear that an award of the Industrial Tribunal or a settlement arrived at in the course of conciliation proceedings



or the settlement arrived at in the course of arbitration proceedings initiated under Sub-section 3-A to 10-A would be binding on all persons, who are employed in the establishment or part of the establishment on the date of dispute or persons who subsequently became employee in the establishment or part of the shop. Therefore, there is an essential distinction in the binding nature of settlement arrived at as a contract between the workmen and the employer and a settlement arrived at by intervention of a third party like a Conciliator or Arbitrator or the Industrial Tribunal. While the 1st is binding only between the parties, the second category will be binding on all the workmen who are employed in the industry on the date of the dispute and thereafter.

18. Admittedly, the dispute arose in 2013 and a reference was made to the Industrial Tribunal in 2013. Pending the dispute, a settlement is arrived at by the Management with the section of the workmen, who were admittedly a minority on the date of the settlement. This settlement was sought to be pressed into service and the Labour Court was invited to pass an award on the basis of this settlement which was rejected by the Labour Court and such rejection was confirmed by a single Judge of this Court.



19. However, on appeal, the Hon'ble Division Bench of this Court held that the fairness of such settlement should alone be tested. After the order of the Division Bench, the Management attempted to short cut the proceedings by filing an application seeking the Tribunal to pass an award in terms of the settlement entered into by it with the 1st respondent Union and it failed in that attempt. This Court refused to interfere. However, the 1st respondent Union projected its own application for passing of an award on the basis of the settlement in so far as its members are concerned.

20. Of course, the Labour Court or the Tribunal is entitled to pass an interim award but, such interim award should be either of interim nature or it should be a final conclusion on any one of the disputes that are referred to it. There cannot be an interim award which would make a settlement applicable to a section of the workers and the Tribunal would still go into the fairness of the very same settlement in respect of another section of workers. This would create an anomalous situation where, if the Industrial Tribunal chooses to conclude that the settlement arrived at is not fair, a section of the employees would be forced to work under a settlement which is unfair and a



section of the employees would get another settlement in terms of the award of the Industrial Tribunal. Such an anomalous situation cannot be permitted. Therefore, the Labour Court or the Industrial Tribunal is bound to test the fairness of the settlement in respect of all the employees. May be some of the employees have accepted the settlement but, if it is found to be an unfair settlement by the Labour Court, the dictum of the court would prevail and not the settlement.

21. In *Managemet of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union* reported in *AIR 1959 SC 1342*, in para 22, the Hon'ble Supreme Court made a distinction between an interim relief and an interim award and the said paragraph reads as follows:-

"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

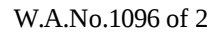


decided. This will be an interim determination of any question relating thereto. In either case it will have to be published as required by Section 17. Such awards are however not in the nature of interim relief for they decide the industrial dispute or some question relating thereto. Interim relief, 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."

Thus, it will be clear that an interim award is one that decides finally, some of the matters referred to it. There cannot be an interim award which decides a particular matter in respect some of the workers and leaves it open in respect of other workers.

22. In ***Amalgamated Coffee Estates Ltd. and Others Vs. Their Workmen*** reported in ***1965 (10) FLR 328***, the Hon'ble Supreme Court was faced with somewhat similar situation where a settlement was arrived at between the Management and a large number of employees pending the proceedings before the Hon'ble Supreme Court. Then, the Hon'ble Supreme Court framed an issue which reads as follows:-

"In view of the fact that admittedly a large number of workmen employed by the Appellants have accepted payments consistently with the terms of the agreements set up by the



In answering the said issue, the Hon'ble Supreme Court sent the agreement or the settlement to the Industrial Tribunal to return a finding as to whether the settlement is fair or not. The Hon'ble Supreme Court also held that on receipt of findings, the issues will be decided.

23. Similarly, in *Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others* reported in (1976) 4 SCC 736 also, there was migration of workmen who belonged to the rival Union as has happened in the present case and a settlement was reached pending proceedings before the Hon'ble Supreme Court. The Hon'ble Supreme Court adopted the same methodology as adopted it in *Amalgamated Coffee Estates Ltd. and Others Vs. Their Workmen* referred supra and referred the matter to back to the Tribunal for the Tribunal to pronounce on the fairness or otherwise of the settlement.

24. In *Sirsilk Ltd. Vs. Government of Andhra Pradesh and Another* reported in *AIR 1964 SC 160*, the Hon'ble Supreme Court went into the

17/22



question of the conflict between 18(1) and 18(3). There, the Hon'ble

Supreme Court after referring to the judgment in ***State of Bihar Vs. D.N.***

Ganguly reported in ***1959 1 SCR 1191*** held as follows:-

"6.*The only way in our view to resolve the possible conflict which would arise between a settlement which is binding under Section 18(1) and an award which may become binding under Section 18(3) on publication is to withhold the publication of the award once the Government has been informed jointly by the parties that a settlement binding under Section 18(1) has been arrived at. It is true that Section 17(1) is mandatory and ordinarily the Government has to publish an award sent to it by the Tribunal; but where a situation like the one in the present cases arises which may lead to a conflict between a settlement under Section 18(1) and an award binding under Section 18 (3) on publication, the only solution is to withhold the award from publication This would not in our opinion in any way affect the mandatory nature of the provision in Section 17(1), for the Government would ordinarily have to publish the award but for the special situation arising in such cases... .*"

25. The facts in ***Sirsilk's*** case were that after an award passed and before its notification in the gazette, the parties entered into a settlement and



the parties wanted the Government to desist from publishing the award in view of the settlement entered into. The Government rejected the claim and said in terms of the 17-A of the Act, the award has to be published. The Government had no option but to publish the award. The High Court however, upheld the decision of the Government. The Hon'ble Supreme Court however, held that in such circumstance where there is likely to be a conflict between the settlement and the award, the notification of the award must be deferred so as to enable the parties to enter into a settlement.

26. In the case on hand, if we are to allow the Court to pass an interim award in respect of the members of the 1st respondent Union only, if the Court comes to the conclusion that the settlement is unfair later, as we already pointed out, there will be two sets of workmen. One set will be bound by the settlement under 18(1) and the other set will be bound by the award under 18(3). Such situation cannot be allowed. Of course, in Sirsilk's case the situation was different. There, there was an award which was not published and there was a settlement between all the workmen and the Management. It therefore became a binding contract on all the workmen in view of Section 18(1) of the Industrial Disputes Act, 1947. Here, the



settlement is between the section of the workmen therefore, this settlement will have to necessarily pass the test of fairness before the Industrial Tribunal. Without passing the test of fairness, the Labour Court cannot be allowed affix its seal of approval and make it an award of the Tribunal only in respect of the some of the employees.

27. The Writ Court has held that since the workmen who are members of the 1st respondent Union have accepted the settlement, there would be no harm in making an award in so far as they are concerned. Unfortunately, the Writ Court had overlooked the possible conflict which may arise, if the Tribunal is to reject the settlement as unfair in respect of the members of the appellant Union. We are therefore, convinced that there cannot be an interim award as directed by the Writ Court in respect some of the employees alone. The Tribunal will have to go into the entire issue and it will decide on the fairness of the settlement and if it upholds the settlement as fair, it will be binding on all the employees.

28. In the light of the above, this Writ Appeal is **allowed**. The order of the Writ Court is set aside. The order of the Tribunal will stand restored and



W.A.No.1096 of 2

the Tribunal will decide the matter afresh in accordance with law within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed. We hope the parties will co-operate with the Tribunal in resolving the long pending dispute.

(R.S.M., J.) (C.K., J.)
15.11.2024

kkn

Internet:Yes

Index: No

Speaking

Neutral Citation :No

R.SUBRAMANIAN, J.
and
C.KUMARAPPAN, J.

21/22



WEB COPY



W.A.No.1096 of 2

KKN

W.A.No. 1096 of 2023
and
C.M.P.Nos.11122 & 22377 of 2023

15.11.2024