COOPER ENGINEERING LIMITED

v.

D. M. ANEY AND OTHERS

May 4, 1973

[A. N. GROVER AND C. A. VAIDIALINGAM, JJ.]

Industrial Disputes Act, 1947—Reference to industrial tribunal of industrial dispute relating to dearness allowance etc.—Competency of reference in view of earlier settlements between employer and workmen—State Government's view that earlier settlements related to interim relief awaiting final recommendations of Wage Board was a possible view, and therefore reference was competent.

On July 6, 1963 there was a settlement between the appellant company and two unions of its workmen regarding dearness allowance. On April 1, 1965 there was another settlement in respect of certain demands but the workmen reserved their right to raise demands relating to wage scales, adjustment and dearness allowance. On July 23, 1966 the Central Government accepted the recommendations made by the Wage Board set up by it with effect from April 1, 1966. On November 1, 1966 the appellant and one of the unions of workmen (2nd respondent) entered into a settlement relating to payment of interim relief as laid down by the Wage Board. The Union agreed not to raise any demand for dearness allowance till the Wage Board made its final recommendations. This position was reiterated in another settlement between the 2nd respondent and the appellant on May 13, 1967. On May 16, 1967 the third respondent, another union of the appellant's workmen made certain demands regarding dearness allowance. By notices given to the appellant company it terminated the earlier settlements of 1963, 1965, 1966 and 1967 between the appellant and the 2nd respondent. Meanwhile on December 23, 1968/January 3, 1969, the Wage Board made its final recommendations. Since the appellant did not accept the demands of the third respondent and conciliation proceedings also failed the State Government on January 25, 1969 referred the dispute to the Industrial Tribunal. The appellant challenged the validity of the reference in a writ petition under Art. 226 of the Constitution. The High Court dismissed the petition. In appeal by special leave to this Court.

HELD : The State Government's view that the settlements related only to interim relief was a possible one in the circumstances of this case. Hence it could not be said that the reference made by the State Government was incompetent. [244 F-G]

None of the settlements entered into by the appellant with its workmen gives any indication that the said settlements were made in view of the statement made by the Minister for Labour, State of Maharashtra. On the other hand every one of the settlements was preceded by a demand made by the union concerned. It was really in the interest of industrial peace that the appellant appeared to have entered into those settlements. Therefore the decisions of this Court in *Indo-Afghan Agencies and Century Spinning & Manufacturing Company Ltd. & Anr.* did not apply to the case. [245G]

Union of India & Ors. v. *M/s Indo-Afghan Agencies Ltd.* [1968] 2 S.C.R. 366 and *Century Spinning & Manufacturing Company Ltd. and Anr.* v. *The Ulhasnagar Municipal Council and Anr.*, [1970] 3 S.C.R. 854 held inapplicable.

The question whether there was discrimination between the appellant and another company in the matter of referring the industrial dispute to the Industrial Tribunal was not raised before the High Court and this Court could not go into the question. [246C]

In the result the appeal must fail

A [In respect of the question whether the third respondent had the right to terminate the earlier settlement and whether it represented the majority of workmen in the company, the Court observed that these questions must be decided by the Tribunal].

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 554 of 1970.

B Appeal by special leave from the judgment and order dated July 31, and August 1, 1969 of the Bombay High Court in S.C. Application No. 799 of 1969.

I. N. Shroff, for the appellant.

J. L. Hathi, K. L. Hathi and *P. C. Kapur,* for respondent No. 2.

C *R. S. Kulkarni* and *S. C. Agarwala,* for respondent No. 3.

M. C. Bhandare and *S. P. Nayar,* for respondent No. 4.

The Judgment of the Court was delivered by

VAIDIALINGAM, J.—By order dated January 25, 1969, the State of Maharashtra referred to the Industrial Tribunal, Bombay, for adjudica-
D tion three disputes between the appellant and its workmen. The said disputes were registered by the Tribunal as Reference (I.T.) No. 42 of 1969. The appellant filed in the Bombay High Court Special Civil Application No. 799 of 1969 under Article 226 of the Constitution to quash the order of reference. The High Court by its judgment and order dated 31st July/1st August, 1969, dismissed the Writ Petition holding that the reference made by the State Government was valid.
E The appellant has filed the above appeal, by special leave, challenging the decision of the High Court.

The facts leading up to the filing of the Writ Petition may now be stated. On July 6, 1963, there was a settlement between the appellant and the workmen represented by the Secretaries of two unions—the Chemical Engineering and Metal Workers Union, Poona and the As-
F sociation of Engineering Workers, Poona. Under clause 1 of this settlement, the appellant agreed to pay dearness allowance on the basis of 75% neutralisation of the Sholarpur Cost of Living Index computed for a month of 26 working days in substitution of the rate of dearness allowance that was then being paid. On July 7, 1964, a charter of demands was submitted by the workmen represented by the General Secretary, Association of Engineering Workers, Poona. The demands related to
G various items including wage scales and dearness allowance. On April 1, 1965, the appellant and the said Association entered into a settlement. From the said settlement, it is seen that though the company conceded certain demands, it was not agreeable to accede in respect of the wages and dearness allowance, on the ground that the Poona Working Class Consumer Price Index was likely to be introduced at an early date, when a change in the wage pattern and dearness allowance
H in the region will be effected. Another reason given by the appellant was that the demands, as made by the union, involved heavy financial liability. The Association agreed that all demands made by it on July 7, 1964, in respect of which no settlement has been reached, will be

treated as withdrawn for the time being. Liberty was reserved to the Association to raise those demands again after the Poona Working Class Consumer Price Index was declared. With this reservation, came the demand for wage scales, adjustment and dearness allowance.

On January 23, 1965, the Association, the 2nd respondent, was recognised by the appellant under the code of discipline. In June 1965, the Poona Working Class Consumer Price Index was declared. The second respondent again raised a demand on August 3, 1965. Demand No. 2 related to dearness allowance. The demand was that the then existing Sholapur Working Class Consumer Cost of Living Index Number should be replaced by the Poona Working Class Consumer Cost of Living Index Number and the linking of old and new series, its multiplier and its rate should be jointly decided between the management and the Association. The Association further required that after such a decision, the workmen should be given 100% neutralisation of the Poona Index.

It should be stated at this stage that on December 12, 1964, the Central Government had set up the Central Wage Board for engineering industries. After the Wage Board was set up, the labour agitated for grant of interim relief. Accordingly the Wage Board recommended to the Government a scheme of interim relief. The Central Government also accepted, by its resolution dated July 23, 1966, the majority recommendations of the Wage Board regarding the grant of interim relief with effect from April 1, 1966. The Central Government further requested all the employers in the engineering industries to implement the recommendations of the Wage Board regarding the interim relief with effect from April 1, 1966.

When the Government's acceptance of the recommendations of the Wage Board was known, the second respondent made a demand on July 28, 1966, for payment of the interim relief. After mutual discussions, the appellant and the second respondent entered into a settlement on November 1, 1966. The entire settlement related to the payment of the interim relief, as laid down by the Wage Board. It was further provided that the interim relief granted shall be adjustable in any rise in Wages as a result of the final recommendations made by the Wage Board in due course. Clauses 11 and 12 of this settlement were as follows :—

> "11. The Union agrees to treat as withdrawn the Charter of demands regarding wage scales and/or Dearness Allowance made by it under its letter dated 3rd August 1965.
>
> 12. The Union further agrees that pending the deliberations and the final recommendations of the Wage Board it will not raise any dispute regarding wages and/or Dearness Allowance."

On August 3, 1965, the second respondent again submitted a charter of demands regarding wage scales, dearness allowance and various other matters. After negotiations, the appellant and the second respondent entered into a settlement on May 13, 1967. There is a reference

A to the settlement of November 1, 1966. Under clause (2) of the settlement, the Association withdrew all demands made under its charters of demands dated August 3, 1965, January 22, 1966 and February 26, 1966 relating to wage scales, dearness allowance and certain other matters. The Association further agreed not to raise any demands regarding wage scales and/or dearness allowance pending the deliberations and the final recommendations of the Wage Board in view of the settlement B dated November 1, 1966, already entered into between the parties.

On May 16, 1967, the third respondent, Serva Shramik Sanghatana, through its General Secretary, made a demand that all workmen should be paid dearness allowance at the rate 6 paise per day for every point of rise over 17 points of the Poona Consumer Price Index Number with effect from January 1, 1967. On October 3, 1967, the third respondent C issued two notices to the appellant-company. By the first notice, it terminated the settlement dated July 6, 1963, entered into between the appellant and the Chemical Engineering and Metal Workers Union and the second respondent, representing the workmen. The second notice terminated the settlements dated February 4, 1965, April 1, 1965 November 1, 1966 and May 13, 1967 entered into between the appellant and the second respondent. Both the notices stated that the previous settle- D ments are terminated under section 19(2) read with rule 83 of the Industrial Disputes Act, 1947. It was also mentioned that the letters of October 3, 1967, are to be treated as two months notice. It will be seen that by these two notices, the settlements dated July 6, 1963, November 1, 1966 and May 13, 1967 have been terminated.

Conciliation proceedings appear to have been initiated. The appel- E lant in its letter to the Deputy Commissioner of Labour dated July 2, 1968, has stated that the interim relief granted by the Wage Board has been already implemented by the appellant. It gave a further assurance that it will implement the final recommendations of the Wage Board, as accepted by the Central Government. On November 30, 1968, fresh demands for dearness allowance were made by the third respondent. The Wage Board made its final recommendations to the Central Govern- F ment. The exact date is not very clear, but it is given differently as December 23, 1968 or January 3, 1969. As the appellant did not comply with the demands of the third respondent and as conciliation proceedings failed, the State Government referred the dispute for adjudication on January 25, 1969. Item 1 related to the dearness allowance to be paid to the monthly rated staff. Demand No. 2 related to the dearness allowance regarding the daily rated workmen. The third G question referred related to the dismissal of the fourteen workmen mentioned in the order and payment of dearness allowance to them.

It was this order of reference that was challenged by the appellant before the High Court in proceedings under Article 226. We have fairly exhaustively given the details about the various settlements to give the background of the dispute between the appellant and its work- H men. The first contention of Mr. Shroff, learned counsel for the appellant, was that the third respondent, which represents only a minority of the workmen, has no right to terminate agreements dated November 1, 1966 and May 13, 1967, entered into by the Association, the second

respondent, representing the majority of the workmen. As these agreements were subsisting and operating and were binding on all the workmen, they can be terminated only as contemplated under section 19(7) of the Industrial Disputes Act, 1947 (hereinafter to be referred to as the Act). When the settlements were subsisting, the order passed by the State Government referring the disputes covered by those settlements, is invalid. A B

On behalf of the State Government, Mr. Bhandare, learned counsel, has stated that the question whether the third respondent represented, on the relevant date, the majority of the workmen bound by the settlements, can be investigated only by the Tribunal. The State Government had taken the view that the entire settlement relates only to the interim relief and, therefore, the question of terminating the agreements by any union does not arise. The counsel further pointed out that the view taken by the State Government regarding the nature of the settlements was a possible view and, therefore, it had power to refer the disputes for adjudication under section 10(1) of the Act. C

Though there has been a very elaborate consideration by the High Court regarding the competency of the third respondent to terminate the settlements, its ultimate decision is rested on a construction of the two settlements dated November 1, 1966 and May 13, 1967. According to the High Court, it is abundantly clear on a reading of the various clauses in the two settlements that they related to payment of wages including dearness allowance, which had the character of an interim relief, as awarded by the Wage Board. It is the further view of the High Court that when the final recommendations of the Wage Board are made, the workmen were at liberty to raise demands regarding wages and dearness allowance legally payable to them. The agreement, if at all, was not to raise any dispute pending the final recommendations of the Wage Board. D E

We have ourselves gone through the various clauses in the two settlements and we are in entire agreement with the view of the High Court. As there has been a very elaborate discussion by the High Court and as we entirely agree with its reasoning, we do not propose to cover the ground over again. As we are now on the limited question regarding the competency of the State Government to make the reference, it must be held that the State Government's view that the settlements related only to the interim relief is a possible one in the circumstances of this case. Hence, we cannot say that the reference made by the State Government was incompetent. F G

We express no opinion on the question regarding the right of the third respondent to terminate the two agreements in question because there is a controversy as to whether, at the relevant date, the third respondent represented the majority of the workmen bound by these agreements. The claim of the third respondent is that it represented the majority of such workmen. The Tribunal, when it adjudicates the dispute, will have to investigate the question when considering the points covered by the settlements as well as the question whether those settlements have been properly terminated, when the reference was made by the State Government. H

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In this view, we are not referring to the relevant provisions of the Act; nor do we deal with the decisions cited on both sides.

The further contention that is taken by Mr. Shroff is based upon the decisions of this Court in *Union of India & Ors.* v. *M/s Indo-Afghan Agencies Ltd.*(1) *and Century Spinning & Manufacturing Company Ltd. and Anr.* v. *The Ulhasnagar Municipal Council and Anr.* (2) B According to Mr. Shroff, the Minister for Labour of Maharashtra, at a meeting of the employers and representatives of the employees, held on September 9, 1965, stated :

> "The Government of Maharashtra would not refer disputes on wages and dearness allowance to adjudication in the case of engineering establishments covered by the Wage Board, if C the concerned employer agreed to implement the recommendations, interim as well as final, of the Central Wage Board, as accepted by the Government of India."

On the basis of this statement of the Minister, the appellant implemented the interim relief and also assured the authorities concerned that it will implement the final rcommendations of the Wage Board. As the appellant has acted on the representations made by the Minister to its D prejudice, the reference of the dispute for adjudication was not justified. Mr. Shroff referred us to the letter dated September 24, 1965, written to the concerned Minister for Labour by the Indian Engineering Association (Western Region) and Engineering Association of India (Western Region) Bombay. This letter refers to the statement made by the Minister on September 9, 1965. He also invited our attention to the letter dated July 2, 1968, written by the appellant to the Deputy Com- E missioner of Labour, Poona. In that letter, the appellant had stated that it had agreed with its workers to implement the interim relief granted by the Wage Board. The appellant gave an assurance to the Deputy Commissioner of Labour, Bombay, that it will implement the recommendations of the Wage Board for engineering industries, as accepted by the Central Government.

F The Act gives power to the State Government to refer a dispute for adjudication. As to how far, by a Minister making a statement, the Government can be relieved of its obligation under the Act, is a debatable question. It is, however, not necessary for us to go into this aspect in this particular case. None of the settlements entered into by the appellant with its workmen gives any indication that the said settlements were being made in view of the statement made by the G Minister. On the other hand, we have already pointed out that every one of the settlements is preceded by a demand made by the union concerned. It is really in the interest of industrial peace that the appellant appears to have entered into those settlements. Therefore, the decisions relied on by Mr. Shroff do not apply in this case.

Lastly, Mr. Shroff contended that the State Government declined to make a reference in the case of the Indian Hume Pipe Co. Ltd. spe- H cifically on the ground that the said company had implemented the in-

(1) [1968] (2) S. C. R. 366. (2) [1970] (3) S. C. R. 854.

terim recommendations of the Wage Board and that it was also prepared to implement its final recommendations. But in the case of the appellant, the State Government made the reference and as such there has been discrimination. A

It is no doubt true that in the letter dated June 8, 1968, sent by the State Government to Indian Hume Pipe Co. Ltd., the Government states that it is not making a reference regarding the dispute between the said company and its workmen. The reason for not making the reference is also stated to be the implementation by the company of the interim recommendations of the Wage Board and its preparedness to implement the final recommendations also. B

We find, however, from the judgment of the High Court that this question of discrimination with special reference to the Indian Hume Pipe company Ltd. has not been argued by the appellant. The inference under such circumstances is that such a contention was not pressed before the High Court. Hence we decline to go into that question. C

In the result, the appeal fails and is dismissed. There will be no order as to costs. As the Reference is of the year 1969, the Tribunal is directed to dispose of the matter expeditiously.

G.C.

Appeal dismissed.