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# JHAGRAKHAN COLLIERIES (P) LTD.

*v.*

# SHRI G. C. AGARWAL, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR AND ORS.

B *November* 28, 1974

[A. ALAGIRISWAMI AND R. S. SARKARIA, JJ.]

*Industrial Disputes Act, Sections* 2(*P*) *and* 18—*Conciliation agreement arrived at in proceedings otherwise than as required under the Act—Acceptance of the settlement by conduct by workmen not parties to settlement—Effect.*

*Industrial Disputes Act, Sections* 10(1) *and* 33-*C* (2)—*Settlement during* C *pendency of proceedings under sec.* 33-*C* (2)—*Settlement, if terminates the proceedings.*

The three collieries owned by the appellant company employ over 4,200 workmen. At the relevant time, there were three Trade Unions functioning at the collieries namely, Madhya Pradesh Koyla Mazdoor Panchayat, Azad Koyla Shramik Sabha and Madhya Pradesh Colliery Workers' Federation.

At the material time, the Panchayat, according to the allegations of the D Company, had about 75 per cent of the workers on its rolls. This Union conducted a complete strike for 57 days in the months of March and April 1968 at the collieries. The Central Wage Board for Mining Industry by its award recommended payment of Variable Dearness Allowance (V.D.A.), correlated to the cost of living index prevailing from time to time. The Company accepted those recommendations. The workers represented by the various Unions, on the basis of the Wage Board's award, demanded V.D.A. at the rate of Rs. 1.47 per day with effect from April 1, 1968 while the Company was paying it at the rate of Re. 1.11 per day. The Company refused to pay more than Re. 1.11 per day. E Thereupon, in December 1968, the Federation, which had a membership of 169 workers (Respondents 4 to 173) made an application before the Central Labour Court-*cum*-Industrial Tribunal Jabalpur (the Labour Court) under s. 33-C(2) of the Industrial Disputes Act for determination of the amount of V.D.A. due to the workers. The Company submitted its Written Statement on May 13, 1969, challenging the jurisdiction of the court and raised other legal objections.

In consequence of the notice of strike under Sec. 22(1) of the Act by the Panchayat, the conciliation proceedings to be under s. 22 read with sec. 12(1) F of the Act were held by Mr. B. D. Sharma, Assistant Labour Commissioner. In the course of these conciliation proceedings besides other matters, the dispute relating to V.D.A. was settled. Subsequent to the signing of the conciliation agreement, the company filed a supplementary statement before the Labour Court that, in view of the settlement, the application filed by the Federation had become infructuous. The stand taken by the workers was that the settlement was not in accordance with the provisions of the Act. The Labour Court tried this issue as a preliminary issue. It held that Shri Sharma was not a duly appointed conciliation officer on the date on which the settlement was arrived at, and con- G sequently, it did not put an end to the dispute pending before the Labour Court. The Writ Petition filed by the Company in the High Court impugning the order of the Labour Court was dismissed. Hence this appeal by special leave.

It was contended for the appellant—(i) Assuming that the settlement in question was not a settlement in the course of conciliation proceedings and binding under s. 18(3) of the Act, it was still a settlement binding on the workmen, including respondents 4 to 173 herein, when 99 per cent of the total workmen had accepted the terms of the settlement, including V.D.A; (ii) The Labour H Court's order refusing permission to the appellant Company to lead evidence to prove the implementation and acceptance of the aforesaid settlement by 99 per cent of the workers, was violative of the principles of natural justice, and (iii) There is nothing in the Act which prohibits the employers and the workmen

from entering into a settlement during the pendency of proceedings under s. 33-C(2) of the Act. On the other hand, settlements *inter se* between the parties have always been preferred by this Court to the adjudicatory process.

HELD (i) A perusal of sec. 18 of the Act makes it clear that a settlement arrived at in the course of conciliation proceedings is binding not only on the actual parties to the industrial dispute but also on the heirs, successors or assigns of the employer on the one hand, and all the workmen in the establishment, present or future, on the other. Thus, had Mr. B. D. Sharma been a duly appointed Conciliation Officer, the settlement arrived at in the conciliation proceedings, duly conducted by him under sec. 12, would have been binding on the entire body of the workers. Since the finding of the High Court to the effect, that the settlement between the Panchayat and the management cannot be deemed a settlement arrived at in the course of conciliation proceedings under the Act, now stands unassailed, sub-sec. (3) of sec. 18 cannot be invoked to make it binding on Respondents 4 to 173 represented by the Federation. An implied agreement by acquiescence or conduct such as acceptance of a benefit under an agreement to which the worker acquiescing or accepting the benefit was not a party being outside the purview of the Act is not binding on such a worker either under sub-sec. (1) or under sub sec. (3) of sec. 18 of the Act. It follows, therefore, that, even if 99% of the workers have impliedly accepted the agreement by drawing V.D.A. under it, it will not—whatever its effect under the general law—put an end to the dispute before the Labour Court and make it *functus officio* under the Act, [878C-E; 879A-E]

(ii) The refusal of the Labour Court to allow the appellant to lead evidence at this stage, has not caused any prejudice to the appellant. The issue decided as a preliminary issue involved a question of law which could be decided on the basis of material on record. Furthermore, the decision of the Labour Court neither debars the appellant from bringing on record evidence relevant to the issues which still remain to be decided, nor does it rule out the agreement for all purposes. [879C-E]

(iii) In *East India Coal Company Ltd., Benares Colliery, Dhanbad* v. *Rameshwar and ors.* [1968] I L.L.J. 6, this Court held that although the scope of s. 33-C(2) is wider than that of sec. 33 C(1), cases which would appropriately be adjudicated under sec. 10(1) are outside the purview of sec. 33C(2). The provisions of S. 33-C are broadly speaking in the nature of executing provisions. The jurisdiction of the Labour Court, in the present case, is not only circumscribed by sec.33-C(2) but the matter also is yet at the initial stage. The controversy between the parties still remains to be determined on merits. [880F & G]

*Amalgamated Coffee Estates Ltd. and Ors.* v. *Their Workmen and Ors.* [1965] II LLJ 110 discussed and *The Sirsilk Ltd. and Ors.* v. *Govt. of Andhra Pradesh and Anr.* [1964] S.C.R. 448, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1968 of 1972.

Appeal by Special Leave from the Judgment and Order dated the 4th August, 1971 of the Madhya Pradesh High Court in Misc. Petition No. 41 of 1970.

*O. P. Malhotra, O. C. Mathur, and R. N. Mishra,* for the Appellant.

*M. K. Ramamurthi* and *J. Ramamurthi* for Respondents Nos 14, 25, 31, 46, 47, 59, 61, 68, 70, 72, 76, 79, 80, 83, 84, 89, 90, 93, 95, 96, 102, 126 and 129.

The Judgment of the Court was delivered by

SARKARIA, J.—This appeal by special leave is directed against the judgment, dated August 4, 1971, of the Madhya Pradesh High Court

A whereby the appellant's Writ Petition under Articles 226 and 227 of the Constitution was dismissed.

The appellant is the Jhagrakhan Collieries (P) Ltd., a Company incorporated under the Indian Companies Act. The Company owns three collieries in Jhagrakhan in Surguja District of Madhya Pradesh. B These collieries employ over 4,200 workmen. At the relevant time there were three Trade Unions functioning at the collieries, namely, (1) Madhya Pradesh Koyla Mazdoor Panchayat (for short, the 'Panchayat'); (2) Azad Koyla Shramik Sabha (for short, the 'Sabha'); (3) Madhya Pradesh Colliery Workers' Federation (for short, the 'Federation')

C At the material time, the Panchayat, according to the allegations of the Company, had about 75 per cent of the workers on its rolls. This Union conducted a complete strike for 57 days in the months of March and April 1968 at the collieries. The Central Wage Board for Coal Mining Industry by its award recommended payment of Variable Dearness Allowance (for short, V.D.A.), correlated to D the cost of living index prevailing from time to time. The Company accepted these recommendations. The workers represented by the various Unions, on the basis of the Wage Board's award demanded V.D.A. at the rate of Rs. 1.47 per day with effect from April 1, 1968 while the Company was paying it at the rate of Rs. 1.11 per day. The Company refused to pay more than Rs. 1.11 per day. Thereupon, in December 1968, the Federation, which had a membership of 169 E workers (Respondents 4 to 173 herein) made an application before the Central Labour Court-*cum*-Industrial Tribunal Jabalpur (for short, the Labour Court) under Section 33-C(2) of the Industrial Disputes Act (for short the 'Act') for determination of the amount of V.D.A. due to the workers. The Company submitted its written statement on May 13, 1969, challenging the jurisdiction of the court and raised other legal objections.

F On October 4, 1969, the Panchayat served a notice of strike under Section 22(1) of the Act on the Company together with a charter of 29 demands and threatened to strike on or after November 7, 1969 if their demands were not conceded. Thereupon, the conciliation proceedings purporting to be under s. 22 read with s. 12(1) of the Act were held by Mr. B. D. Sharma, Assistant Labour Commissioner G (C) Shahdol on the 21st and 22nd October, 1969. In the course of these conciliation proceedings on October 22, 1969, besides other matters, the dispute relating to V.D.A. was settled. On October 22, 1969, the Assistant Labour Commissioner (Mr. Sharma) sent a report together with a copy of the settlement to the Government, as required by Section 12(3) of the Act. Subsequent to the signing of this H conciliation agreement, dated October 22, 1969, the Company filed a supplementary statement on November 5, 1969, submitting that in view of the said settlement, the application under s. 33C(2) of the Act filed by the Federation, had become infructuous. The Labour

Court by its order, dated December 20, 1969 framed this additional issue: "Whether the claim stands settled by reason of settlement dated 22-10-1969, if any". A

On behalf of the workers several objections were raised to the enforceability of this settlement. Their ultimate stand was that the settlement was not in accordance with the provisions of the Act, inasmuch as it had not been brought about in proceedings before a duly appointed Conciliation Officer. The Labour Court tried this issue as a preliminary issue. It held that Shri Sharma was not a duly appointed Conciliation Officer on the date on which the settlement was arrived at, and consequently, it did not put an end to the dispute pending before the Labour Court. B

To impugn this order of the Labour Court, the Company through its agent and Mining Engineer filed a Writ Petition under Article 226 and 227 of the Constitution, which as stated before, was dismissed by the High Court. Hence this appeal. C

Mr. Malhotra, learned Counsel for the appellant raised three points in the course of his arguments before us:

(1) In holding that the settlement, dated October 22, 1969 was not a settlement in the course of conciliation proceedings, the courts below have misconstrued Section 4 of the Act, inasmuch as, they have relied only upon sub-section (1) and have not taken into account its sub-section (2) and the relevant notification thereunder. D

E

(2) (a) Assuming that the settlement in question was not a settlement in the course of conciliation proceedings and binding under s. 18(3) on the Act, it was still a settlement binding on the workmen, including respondents 4 to 173 herein, when 99 per cent of the total workmen had accepted the terms of the settlement, including V.D.A. F

(b) The Labour Court's order refusing permission to the appellant Company to lead evidence to prove the implementation and acceptance of the aforesaid settlement by 99 per cent of the workers, was violative of the principles of natural justice.

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(3) There is nothing in the Act which prohibits the employee and the workmen from entering into a settlement during the pendency of proceedings under s. 33-C(2) of the Act. On the other hand, settlements *inter se* between the parties have always been preferred by this Court to the adjudicatory process.

Subsequently, however, Mr. Malhotra withdrew his contention with regard to point No. (1) and requested the Court not to give any finding thereon. We, therefore, refrain from going into the same. H

A For points (2) and (3), Mr. Malhotra placed reliance on two decisions of this Court, namely: *Amalgamated Coffee Estates Ltd. and ors.* v. *Their workmen and others*(1) and *The Sirsilk Ltd. and ors*, v. *Government of Andhra Pradesh and anr.*(2)

Before dealing with the points canvassed, it will be appropriate to examine the relevant provisions of the Act. Section 2(p) of the B Act defines settlement to mean—

> "a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be pres- C cribed and a copy thereof has been sent to (an officer authorised in this behalf by) the appropriate Government and the conciliation officer."

As analysis of the above definition would show that it contemplates only two kinds of settlement (i) A settlement arrived at in the course of conciliation proceedings under the Act and (ii) a written D agreement between the employer and the workmen arrived at otherwise than in the course of conciliation proceedings. But a written agreement of the latter kind in order to fall within the definition must satisfy two more conditions, namely: (a) it must have been signed by the parties thereto in the prescribed manner, and (b) a copy thereof must have been sent to the authorities indicated in s. 2(p).

E The effect of a settlement of the first kind is indicated in sub-section (3) and that of the second in sub-s. (1) of s. 18 of the Act. The material part of s. 18 reads:

> "18(1) A settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement.
>
> F (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 (or an arbitration award G in a case where a notification has been issued under sub-section (3A) of Section (10A) or (an award of a Labour Court, Tribunal or National Tribunal) which has become enforceable shall be binding on—
>
> (a) all parties to the industrial dispute;
>
> H (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, (arbitrator) (Labour Court, Tribunal or National

(1) [1965] II LLJ 110. (2) [1964] S.C.R. 448.

Tribunal), as the case may be, records the opinion that they were 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."

It is clear from a perusal of Section 18, that a settlement arrived at in the course of conciliation proceedings is binding not only on the actual parties to the industrial dispute but also on the heirs, successors or assigns of the employer on the one hand, and all the workmen in the establishment, present or future, on the other. In extending the operation of such a settlement beyond the parties thereto, sub-section (3) of the Section departs from the ordinary law of contract and gives effect to the principle of collective bargaining. Thus, had Mr. B. D. Sharma been a duly appointed Conciliation Officer, the settlement arrived at in the conciliation proceedings, duly conducted by him under Section 12, would have been binding on the entire body of the workers including Respondents 4 to 173 represented by the Federation, and others who are members of the Sabha. Since the finding of the High Court to the effect that the settlement between the Panchayat and the management cannot be deemed to be settlement arrived at in the course of conciliation proceedings under the Act, now stands unassailed, the aforesaid sub-section (3) cannot be invoked to make it binding on Respondents 4 to 173. The question remains : Can it be enforced against these Respondents by virtue of sub-section (1) of the Section ? This further narrows down into the issue : Were these respondents parties and signatories to the agreement between the management and the Panchayat ? The answer to this question is undoubtedly in the negative.

Even Mr. Malhotra has conceded that at the time when the settlement was arrived at on October 22, 1969, these respondents and the members of the Sabha, were not parties to it. But his argument is that subsequently by drawing V.D.A. in accordance with the settlement, 99% of the workers have accepted the settlement which, in consequence, would be as effective against them as if they were parties to it.

The argument is attractive but does not stand a close examination.

We have already noticed that according to the scheme of s. 18, read with s. 2(d), an agreement, made otherwise than in the course of conciliation proceedings, to be a settlement within the meaning of

A the Act must be a written agreement signed in the manner prescribed by the Rules framed under the Act. As rightly pointed out by Mr. Ramamurthy, learned Counsel for the Respondents an implied agreement by acquiescence, or conduct such as acceptance of a benefit under an agreement in which the worker acquiescing or accepting the benefit was not a party, being outside the purview of the Act, is B not binding on such a worker either under sub-section (1) or under sub-section (3) of s. 18. It follows, therefore, that even if 99% of the workers have impliedly accepted the agreement arrived at on October 22, 1969, by drawing V.D.A., under it, it will not—whatever its effect under the general law—put an end to the dispute before the Labour Court and make it *functus officio* under the Act.

C The refusal of the Labour Court to allow the appellant to lead evidence at this stage, has not caused any prejudice to the appellant. The issue decided as a preliminary issue involved a question of law which could be decided on the basis of material on record. For its decision, it was not necessary to prove that 99% of the workers had accepted the agreement dated October 22, 1969. Even on an D assumption of that fact in favour of the Company, the claim before the Labour Court could not be deemed to have been settled qua respondents 4 to 173.

Furthermore, the decision of the Labour Court neither debars the appellant from bringing on record evidence relevant to the issues which still remain to be decided, nor does it rule out the agreement E dated October 22, 1969, for all purposes. Indeed, the Labour Court has in its order, towards the end, expressly said that the settlement, dated October 22, 1969, can be binding under s. 18(1) of the Act between the contracting parties.

In view of the above, we would negative contention (2) canvassed by Mr. Malhotra.

F This takes us to the third contention. Assuming that the Act does not inhibit the employers and the workmen from arriving at a settlement during the pendency of proceedings under s. 33-C(2) of the Act, such a settlement, not being one arrived at in the course of conciliation proceedings would be enforceable only against the parties thereto. In the present case, Respondents 4 to 173 and others who G were not parties to the settlement dated October 22, 1969, would not be bound by it.

In the case of *Amalgamated Coffee Estates Ltd.* v. *Their workmen* (supra) cited by Mr. Malhotra, pending the appeals by the management before this Court, the subject-matter of the award were settled between most of the managements and most of their employees re- H presented by certain Unions. An application was made requesting the Court to dispose of the appeals in terms of such settlement. It was opposed on behalf of some of the employees. This Court called for a finding from the Industrial Tribunal on this issue.:

"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 employers, in their present petition, is it shown by the respondents that the said agreement is not valid and binding on them?"

The Tribunal submitted the finding that in every estate payments were made in terms of the settlement and such payments were voluntary and knowingly accepted by the workmen. It also held that the terms of the settlement were fair. This Court accepted the finding of the Tribunal holding that "the settlement appears to us also to be a fair one". It therefore, decided the appeals in terms of the settlement.

It will be seen that the decision in *Amalgamated Coffee Estates* case (supra) stands on its own facts. There the appeals arose out of an award of the Special Industrial Tribunal for plantations in a dispute between 228 coffee, tea and rubber estates in South India and their employees referred to it under s. 10(1) whereas the instant appeal arises out of proceedings under s. 33-C(2) for the recovery of money on the basis of the Wage Board's award and the dispute, if any, is about the computation of V.D.A. in implementation of that award. The scope of s. 33-C(2) is not the same as that of s. 10(1) of the Act. In *East India Coal Company Ltd. Banares Colliery, Dhanbad* v. *Raweshwar and Ors.*(1) this Court held that although the scope of s. 33-C(2) is wider than that of a 33-C(1), cases which would appropriately be adjudicated under s. 10(1) are outside the purview of s. 33 C(2). The provisions of s. 33-C are, broadly speaking, in the nature of executing provisions.

An appeal being a rehearing of the case, in *Amalgamated Coffee Estates'* case, the jurisdiction of the Court to decide the dispute in a just manner was co-extensive with that of the Tribunal to which it was referred under s. 10(1). This Court found in agreement with the report of the Tribunal that the settlement arrived at between the most of the Unions representing most of the workers and the managements was fair and conducive to industrial peace, and therefore, it was just and appropriate to decide the dispute and dispose of the appeals in terms of the settlement.

In the case before us, the jurisdiction of the Labour Court is not only circumscribed by s 33-C(2) but the matter also is yet at the initial stage. The controversy between the parties still remains to be determined on merits. We, therefore, do not think it necessary to say anything more with regard to contention No. 3 than what we have broadly indicated above.

For the foregoing reasons, the appeal fails and is dismissed with costs.

V.M.K. *Appeal Dismissed.*

1. [1968] 1 L.L.J. 6.