TATA ENGINEERING & LOCOMOTIVE CO. LTD.

v.

THEIR WORKMEN

October 16, 1981

[A.D. KOSHAL, V. BALAKRISHNA ERADI & R.B. MISRA, JJ.]

Industrial Disputes Act, 1947—Section 18(1)—Workmen signed a settlement—Union claimed that the declaration was forged and fictitious—Burden of proof on whom lay—Workmen, if could claim the settlement was unjust and unfair.

In conciliation proceedings in relation to the demands of one of the two unions (known as Sanghatana) of workers of the appellant-company a settlement wat reached. At the instance of the second union (Telco Union) which was dissatisfied with the settlement, the Government referred the dispute to the tribunal. Before the tribunal the company contended that since 564 out of 635 daily rated workers to whom the settlement reached by the Sanghatana related, had assented to it, the dispute no longer survived.

Rejecting the Telco Union's contention that the settlement was vitiated by duress, coercion or false promises, the tribunal held that it was binding on the parties under section 18 (1) read with section 2 (p) of the Industrial Disputes Act. The tribunal, however, held that it had not been proved by either party as to how many of the 564 workmen, who had assented to the settlement, were members of the Sanghatana. Although the tribunal found that the settlement was just and fair in most aspects it held that an increase in the additional daily wages was called for in respect of certain categories and calculated the increase separately for each grade. The tribunal refused to act upon the settlement.

Allowing the appeal,

HELD : The declaration signed by 564 workers of the company constituted presumptive proof of the fact that the signatories to it were all members of the Sanghatana when they signed it. In the absence of any evidence that any of the signatories to the declaration was not one of the 635 workers or that any signature appearing in the declaration was forged or fictitious the assertion of each signatory that he was a member of the Sanghatana is to be presumed to be correct until it is shown to be false. The onus to prove the falsity of the assertion in the case of any particular workman rested on the Telco Union which made no attempt to discharge the burden. Out of 635 workmen, 564 signed the declaration. The fact that 400 workmen later on challenged the settlement only leads to the inference that at least 329 workmen changed sides afterwards.

[932 H; 933A-C]

A The conclusion of the tribunal that the settlement was not just and fair is unsustainable. The settlement as a whole was just and fair. If the settlement had been arrived at by a vast majority of the concerned workmen with their eyes open and was accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers were not parties to it or refused to accept it or because the tribunal was of the opinion that the workers deserved marginally higher B emoluments than they themselves thought they did. The question whether a settlement is just and fair has to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication. [933 G-H]

Herbertsons Limited v. *Workmen of Herbertsons Limited & Others,* [1977] 2 S.C.R. 15 followed.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1484 of 1971.

Appeal by special leave from the Award dated the 30th April 1971 of the Industrial Tribunal Maharashtra, Bombay in Reference D No. I.T. 123 of 1968 published in the Maharashtra Government Gazette dated the 5th August, 1971.

M.C. Bhandare and *Dr. Y.S. Chitale, O.C. Mathur, K.J. John* and *J.S. Sinha,* for the Appellant.

E *Jitendra Sharma* and *Janardan Sharma* for Respondent No. 1.

K. Rajendra Choudhary for Respondent No. 2.

The Judgment of the Court was delivered by

F KOSHAL, J. This is an appeal by special leave against an award dated 30th April, 1971 of the Industrial Tribunal, Maharashtra (the Tribunal, for short), deciding a reference made to it under clause (d) of sub-section 1 of section 10 of the Industrial Disputes Act (hereinafter called the Act) requiring adjudication of demands raised by the workmen of the Tata Engineering and Locomotive Company Limited G (Machine Tools Division), Chinchwad (hereinafter referred to as the company).

2. The facts leading to this appeal may be briefly set out. The Company came into existence under an order passed by the H High Court of Maharashtra on the 27th June, 1966 directing amalgamation of two pre-existing concerns, one having the same name as the Company and another known as the Investa Machine

Tools and Engineering Company. After the amalgmation a section of the workers of the Compay formed a union known as Telco Kamgar Union (for short, the Telco Union) which was registered as such on the 2nd June, 1967, but which, even before that, submitted a charter of demands to the Company on the 1st May, 1967. Subsequently other workers of the Company established another union named the Telco Kamgar Sanghatana (hereinafter called the Sanghatana) which presented another set of demands to the Company on the 29th September, 1967. A settlement was reached in conciliation proceedings in relation to the demands last mentioned on the 3rd October, 1967. Being dissatisfied with the attitude of the Assistant Labour Commissioner, Poona who acted as the Conciliation Officer, the Telco Union approached the State Government who made the reference culminating in the impugned award.

3. The reference was received by the Tribunal on the 22nd March, 1968 and was pending adjudication when, on the 18th February, 1970, the Company filed an application (Exhibit C-10) stating that a settlement (Exhibit C-10A) had been reached between it and the Sanghatana on the 7th February 1973, that the same had been assented to by 564 out of 635 daily-rated workmen, that the dispute pending adjudication before the Tribunal related only to that category of workmen and that it did not survive by reason of the settlement.

Settlement Exhibit C-10A was challenged by the Telco Union through an application (Exhibit U-1) made to the Tribunal on the 14th April, 1970 and signed by 400 daily-rated workmen who professed to be members of that Union with the allegation that it had been brought about by coercion, duress and false promises.

In these circumstances, the Tribunal addressed itself to the controversy regarding the legality and binding nature of the settlement. In that behalf its findings were:

(a) There was no evidence of the settlement being vitiated by any duress, coercion or false promises. It was, therefore, both legal and fully binding on the parties, thereto under sub-section (1) of section 18 read with clause (p) of section 2 of the Act.

(b) No attempt had been made by either party to the reference to prove as to how many of the 564 workmen

A who had assented to the settlement were members of the Sanghatana.

(c) Those of the 564 workmen aforesaid who were not members of the Sanghatana were not bound by the settlement in as much as they were not parties thereto
B but had ratified or accepted the settlement only after it had been reached; and such ratification and acceptance does not make them *parties* to the settlement for the purposes of the Act.

The Tribunal, therefore, proceeded to find out whether the
C settlement was just and fair and although it found it to be so in most aspects, it was of the opinion that an increase in the additional daily wage was called for in respect of each of the 7 grades of daily-rated workmen. That increase was calculated by it separately for each grade and varies from Rs. 7.80 to Rs. 12.90 per month. By the impugned award it declared accordingly, refusing to act upon
D the settlement although the same had been held by it to be legal and binding on the parties to it.

4. After hearing learned counsel for the parties, we have come to the conclusion that finding (b) above set out cannot be sustained. It is not disputed before us that the settlement dated
E 7th February, 1970 was arrived at between the Company on the one hand and the Sanghatana on the other and also that it was assented to by the said 564 workmen by means of a document (Exhibit S-8) bearing their signatures underneath a declaration which reads:

"We, the following workers, *who are members of the*
F *Telco Kamgar Sanghatana*, hereby sign individually on the settlement, which has been agreed upon and signed under Section 2 (p) of the Industrial Disputes Act, 1947. The terms and conditions of the settlemnt are acceptable to me and are binding on me."

G (emphasis supplied).

It is no body's case that any of the signatories to this declaration was not one of the said 635 workers or that any of the signatures appearing underneath the declaration was forged or fictitious. And
H if that be so, the assertion by each signatory to the declaration that he was a member of the Sanghatana has to be taken at its face value and presumed to be correct until it is shown to be false. The onus

to prove the falsity of the assertion in the case of any particular workman thus rested heavily on the Telco Union but it made no attempt to discharge the same. It has been urged on its behalf that the very fact that 400 workmen had challenged the settlement claiming to be members of the Telco Union showed that the declaration made earlier was not correct. Now it is true that out of a total of 635 workmen, 564 signed the declaration and later on 400 challenged the settlement. The only reasonable inference to be drawn from that circumstance would, however, be that at least 329 workers changed sides in between the 18th of February 1970 and the 14th of April, 1970. It cannot be further interpreted to mean, in the absence of any other evidence on the point, that the declaration, when made, was false. In this view of the matter we must hold that the declaration constitutes presumptive proof of the fact that the signatories to it were all members of the Sanghatana when they signed it.

5. The correctness of finding (a) has not been assailed before us on behalf of either party and in view of the provisions of sub-section (1) of section 18 of the Act that finding must be upheld so that settlement dated the 7th February 1970 would be binding on all workers who were members of the Sanghatana as on that date including the 564 workers who signed the declaration. Consequently finding (c) which is unexceptionable in so far as it goes, loses all its relevance and we need take no further notice of it.

6. The conclusion reached by the Tribunal that the settlement was not just and fair is again unsustainable. As earlier pointed out, the Tribunal itself found that there was nothing wrong with the settlement in most of its aspects and all that was necessary was to marginally increase the additional daily wage. We are clearly of the opinion that the approach adopted by the Tribunal in dealing with the matter was erroneous. If the settlement had been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers (in this case 71, i.e., 11.18 per cent) were not parties to it or refused to accept it, or because the Tribunal was of the opinion that the workers deserved marginally higher emoluments than they themselves thought they did. A settlement cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on the basis of principles different from those which come into play when an

industrial dispute is under adjudication. In this connection we cannot do better than quote extensively from *Herbertsons Limited* v. *Workmen of Herbertson Limited and Others*,(1) wherein Goswami, J., speaking for the Court observed.

> "Besides, the settlement has to be considered in the light of the conditions that were in force at the time of the reference. It will not be correct to judge the settlement merely in the light of the award which was pending appeal before this Court. So far as the parties are concerned there will always be uncertainty with regard to the result of the litigation in a Court proceeding. When, therefore, negotiations take place which have to be encouraged, particularly between labour and employer, in the interest of general peace and well being there is always give and take. Having regard to the nature of the dispute, which was raised as far back as 1968, the very fact of the existence of a litigation with regard to the same matter which was bound to take some time must have influenced both the parties to come to some settlement. The settlement has to be taken as a package deal and when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so far as the award is concerned, it cannot be said that the settlement as a whole is unfair and unjust.
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> We should point out that there is some misconception about this aspect of the case. The question of adjudication has to be distinguished from a voluntary settlement. It is true that this Court has laid down certain principles with regard to the fixation of dearness allowance and it may be even shown that if the appeal is heard the said principles have been correctly followed in the award. That, however, will be no answer to the parties agreeing to a lesser amount under certain given circumstances. By the settlement, labour has scored in some other aspects and will save all unnecessary expenses in uncertain litigation. The settlement, therefore, cannot be judged on the touch-stone of the principles which are laid down by this Court for adjudication.

(1) [1977] 2 SCR 15.

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There may be several factors that may influence parties to a settlement as a phased endeavour in the course of collective bargaining. Once cordiality is established between the employer and labour in arriving at a settlement which operates well for the period that is in force, there is always a likelihood of further advances in the shape of improved emoluments by voluntary settlement avoiding friction and unhealthy litigation. This is the quintessence of settlement which courts and tribunals should endeavour to encourage. It is in that spirit the settlement has to be judged and not by the yardstick adopted in scrutinising an award in adjudication. The Tribunal fell into an error in invoking the principles that should govern in adjudicating a dispute regarding dearness allowance in judging whether the settlement was just and fair.

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It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement."

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The principles thus enunciated fully govern the facts of the case in hand, and, respectfully following them, we hold that the

A settlement dated the 7th February 1970 as a whole was just and fair.

7. There is no quarrel with the argument addressed to us on behalf of the workers that mere acquiescence in a settlement or its acceptance by a worker would not make him a *party* to the settle-
B ment for the purpose of section 18 of the Act (vide *Jhagrakhan Collieries (P) Ltd.* v. *Shri G.O. Agarwal, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Jabalpur and Others*, (1). It is further unquestionable that a minority union of workers may raise an industrial dispute even if another union which consists of the majority of them enters into a settlement with the
C employer (vide *Tata Chemicals Ltd.* v. *Its Workmen*, (2). But then here the Company is not raising a plea that the 564 workers became parties to the settlement by reason of their acquiescence in or acceptance of a settlement already arrived at or a plea that the reference is not maintainable because the Telco Union represents only a minority of workers. On the other hand the only two conten-
D tions raised by the Company are :—

(i) that the settlement is binding on all members of the Sanghatana including the 564 mentioned above because the Sanghatana was a party to it, and

E (ii) that the reference is liable to be answered in accordance with the settlement because the same is just and fair.

And both these are contentions which we find fully acceptable for reasons already stated.

F 8. In the result the appeal succeeds and is accepted. The impugned award is set aside and is substituted by one in conformity with the settlement. There will be no order as to costs.

P.B.R. *Appeal allowed.*

(1) [1975] 2 SCR 873.
(2) [1978] 3 SCR 535.