Workmen Of M/S. Delhi Cloth And General ... vs Management Of M/S. Delhi Cloth And ... on 17 October, 1969

Equivalent citations: 1970 AIR 1851, 1970 SCR (2) 886, AIR 1970 SUPREME COURT 1851, 1970 LAB. I. C. 1407

Author: I.D. Dua

Bench: I.D. Dua, V. Ramaswami

PETITIONER:
WORKMEN OF M/S. DELHI CLOTH AND GENERAL MILLS

Vs.

RESPONDENT:
MANAGEMENT OF M/S. DELHI CLOTH AND GENERAL MILLS LTD.

DATE OF JUDGMENT:
17/10/1969

BENCH:
DUA, I.D.
BENCH:
DUA, I.D.
RAMASWAMI, V.

CITATION:
1970 AIR 1851 1970 SCR (2) 886
1969 SCC (3) 302
CITATOR INFO :
D 1981 SC1660 (7)

ACT:
Industrial Disputes Act (14 of 1947) s. 18(1) and Industrial Disputes (Central) Rules, 1957 r. 58 (4)-Non-compliance with rule-Settlement between management and union if binding on workmen.

HEADNOTE:
In conciliation proceedings before the Conciliation Officer, D.C.M. (City Shop) Karamchari Union espoused workman Shibban Lal's cause. On June 18, 1965 the Conciliation Officer submitted his failure report to the Government. On June 9, 1965 a settlement had been arrived at between the Union and the management of the D.C. & G. Mills Ltd. The Conciliation

Officer was not informed of this settlement before the sub-mission of his report. The settlement dated June 9, 1965 was filed before the Conciliation Officer on June 30, 1965. Pursuant to the Conciliation Officer's report the industrial dispute was referred by the Government to the Additional Industrial Tribunal. On October 6, 1965 written statement was filed by the management before the Tribunal. The Kapra Karamchari Sangh also filed a statement of claim on behalf of workman Shibban Lal through its General Secretary along with an application for substituting the Sangh in place of the Union. It was stated in the application that since the Union had entered into a settlement with the management not to contest Shibban Lal's case, 53 out of 88 workers of D.C.M. (City Shop) had requested the Sangh to take up this worker's case and the Sangh had thereupon unanimously decided to take up his cause. The management opposed this application. It was finally decided that the Sangh should represent Shibban Lal workman without its being substituted for the Union. The management then pressed its objection to the validity of the settlement of claim filed by the Sangh. The Tribunal held that the claim filed by the Sangh should be deemed to have been filed on behalf of Shibban Lal. On appeal in this Court the correctness of this view was not challenged on behalf of the respondent. The special leave application in this Court was supported by an affidavit sworn by Shibban Lal.

On a preliminary objection raised on behalf of the respondent to the competency of the appeal presented in this Court by the Sangh on the ground that the Sangh was neither a party to the industrial dispute before the Tribunal nor did it espouse Shibban Lal's cause in the proceedings against him.

HELD : (1) On the facts and circumstances of this case the special leave application and the appeal must be held to have been filed in this Court by the Sangh as representing Shibban Lal who had agreed to be represented by the Sangh. The appeal filed by the Sangh, therefore, cannot be considered to be unauthorised and legally incompetent on the ground urged. [891 G-H]

(2) Rule 58 (4) of the Industrial Disputes (Central) Rules, 1957 made under s. 38 of the Industrial Disputes Act has full force of law of

887

which judicial notice can be taken. This rule must be fully complied with if the settlement is to have a binding effect on all workmen. [896 A]

(3) When a dispute is referred to the Conciliation Officer the management and the workers' Union cannot claim absolute freedom of contract to arrive at a settlement in all respects binding on all workmen. An agreement to be valid and binding must comply with the provisions of the Statute and the Rules made thereunder. The settlement in the present case did not comply with r. 58(4) which is

mandatory. Therefore, under s. 18(1) of the Act read with the other sub-sections in the light of the definition of "Settlement" contained in s. 2(p) there is no unfettered freedom in the management and the Union to settle the dispute as they please so as to clothe the settlement with a binding effect on all workmen or even on all member-workmen of the Union. [895 B-D]

(4) Though the plea of non-compliance with r. 58(4) was not raised by the appellant before the Tribunal if the respondent wanted to show that the reference was invalid because of a lawful settlement then it was incumbent on the party relying on such a settlement to prove that it was lawful and valid, rendering the reference illegal. It was also incumbent on the Tribunal to satisfy itself that the settlement was in accordance with the Act and Statutory Rules. [896 A-B]

[The case was accordingly remanded to the Tribunal for adjudication upon the dispute on the merits.]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2006 of 1966.

Appeal by special leave from the Award dated February 17, 1966 of the Industrial Tribunal, Delhi in I.D. No. 176 of 1965.

D. R. Gupta and H. K. Puri, for the appellants. C. K. Daphtary, D. R. Thadani and A. N. Goyal, for the respondent.

The Judgment of the Court was delivered by Dua, J. The Workmen of M/s. Delhi Cloth and General Mills, Bara Hindu Rao, Delhi, have appealed to this Court by special leave from the award of the Additional Industrial Tribunal, Delhi dated February 17, 1966 holding that Shibban Lal was bound by the settlement dated June 9, 1965 and, therefore, there was no industrial dispute on the date of reference which could be referred for adjudication. The facts necessary for the purpose of this appeal may now be briefly stated. The Chief Commissioner, Delhi by means of an order dated September 9, 1965 referred the dispute in controversy to the Additional Industrial Tribunal, the order of reference being in the following terms :

> "Whereas from a report submitted by the Conciliation Officer, Delhi under section 12(4) of the Industrial Dispute Act, 1947, it appears that an industrial dispute exists between the management of M/s. Delhi Cloth & General Mills, Ltd., Bara Hindu Rao, Delhi and its workmen and Shri Shibban Lal and the said dispute has been taken up by the D.C.M. (City Shop) Karamchari Union, 1121, Chatta Madan Gopal, Maliwara, Chandni Chowk, Delhi."

Before the Additional Industrial Tribunal the Management had raised various preliminary objections including the objection that Kapra Karamchari Sangh (hereafter called the Sangh) was not competent to take up the case of Shri Shibban Lal, and that the D.C.M. (City Shop) Karamchari Union (hereafter called the Union), which had originally taken up the cause of workmen, having agreed by the settlement dated June 9, 1965 not to prosecute his case, withdrew its support to his cause with the result that the dispute relating to the dismissal of Shibban Lal was, not an industrial dispute. It was further averred that Shibban Lal was bound by the act of his representatives who had made the settlement dated June 9, 1965, and was, therefore, estopped from challenging the same.

On these preliminary objections the following four issues were framed and were taken up for decision in the first instance.

(1) Has the Karpra Karamchari Sangh no locus- standi to file the statement of claim ?

2. Is the reference incompetent because of settlement dated June 9, 1965 between the D.C.M. (City Shop) Karamchari Union and Management ?

3. Is the dispute not an industrial dispute?

4. Is Shibban Lal estopped from raising the present dispute ?

On issue No. 1. the Tribunal held that although the Sangh had been merely authorised to represent Shibban Lal and was not a party entitled to file the statement of claim in its own right, nevertheless the claim filed by it was to be deemed to be on behalf of Shibban Lal who had agreed to be represented by the Sangh. Issues Nos. 2 to 4 were discussed together and the Tribunal held that the settlement dated June 9, 1965 which was signed on behalf of workmen by the Secretary and Vice President of the Union was not arrived at by unauthorised persons. The said settlement was, therefore, held binding on persons who were parties thereto and Shibban Lal being a member of the Union was bound by it. In face of that settlement, the Tribunal felt that there was no industrial dispute which could be referred for adjudication on the date of reference.

In this Court on behalf of the respondent, the Management of M/s. Delhi Cloth and General Mills Ltd. a preliminary objection was raised to the competency of the present appeal. It was contended by Shri Daphtary that the appeal was presented in this Court by the Sangh which was neither a party to the industrial dispute before the Tribunal, nor did it espouse the cause of Shibban Lal's dismissal. Shibban Lal, according to the submission, being a party affected could certainly appeal but not the Sangh. It was added that Shibban Lal being the solitary employee of the respondent, who was the member of the Sangh the latter was not only disentitled to espouse Shibban Lal's cause but as a matter of fact it did not so; the Sangh, the counsel argued, merely undertook to represent Shibban Lal before the Tribunal. We are unable to uphold the preliminary objection. It is clear from the record that the Union originally took up Shibban Lal's cause. On June 18, 1965 the Conciliation Officer submitted his failure report to the Government. It is apparent that till then the Conciliation Officer was not informed by either of the parties that a settlement had been arrived at in the matter of the dispute in question. Indeed the record shows that Shri Jai Bhagwan Sharma, who represented

the workman in the conciliation proceedings had informed the Conciliation Officer that no settlement had been reached. The settlement dated June 9, 1965 appears to have been filed before the Conciliation Officer on June 30, 1965, long after the submission of the failure report. The Additional Industrial Tribunal after taking cognizance of the dispute issued notice to the parties on September 16, 1965 fixing October 5, 1965 for filing the statements of claim. The case was, however, taken up on October 6, 1965 because October 5, 1965 was declared a gazetted holiday. On October 6, 1965 the written statement was filed by the Management. The Sangh also filed a statement of claim on behalf of Shibban Lal through Shri Jai Bhagwan, General Secretary of the Sangh, with an application for substituting the Sangh in place of the Union as mentioned in the reference, it being averred in the application for substitution that consequent upon the Union having entered into a settlement with the Management not to contest Shibban Lal's claim, 53 out of 88 workers of D.C.M. (City Shop) had requested the Sangh to take up Shibban Lal's case and the Sangh thereupon unanimously decided to take up his cause. The dispute, it was added, concerned all workmen. The Management was given an opportunity to file objections to this application. On October 28, 1965 the Management opposed the application of the Sangh for being impleaded in place of the Union. While opposing the prayer of the Sangh the Management expressed ignorance about the averment that 53 out of 88 workers of D.C.M. (City Shop) had requested the Sangh to take up the cause of Shibban Lal. It was added that espousal by the Sangh at that stage was illegal as the matter had already been referred by the Government. Espousal, according to this plea, could only be at the stage of conciliation proceedings and not after the reference. It was also denied that the dispute concerned all workmen. An agreement having been entered into by the Union, representation by the Sangh was described to be an abuse of the process of law. The dispute, pleaded the Management, had been settled for ever and Shibban Lal was a party to the said settlement. Shibban Lal filed an affidavit on November 3, 1965, affirming that, on December 26, 1964, the Union had properly resolved to contest his claim And that on December 28, 1964 the statement of claim, regarding Shibban Lal's proposed retirement on December 31, 1964, was filed before the Conciliation Officer. It was further affirmed in this affidavit : (i) that during the pendency of the dispute before the Conciliation Officer, the Management retired him and he was not allowed to join duty with effect from January 1, 1967, (ii) that in the absence of any valid authority either from the Union or from the parties, pursuant to a resolution to that effect, passed by the workmen of the establishment, Shri Musaddi Lal and Shri Babu Ram had no authority to enter into any settlement in respect of deponent's dispute, (iii) that no settlement was ever brought to the notice of the Union or the workmen, (iv) that on June 14, 1965 the Union of the workmen opposed the said settlement, was resolved that the Union did not agree to any settlement whatsoever regarding the deponent's retirement, including settlement in respect of the conciliation proceedings, (v) that on July 25, 1965 the Union of the workmen opposed the said settlement, (vi) that the settlement had been filed by the conciliation Officer on June 24, 1965 whereas the failure report of the said officer had even reached the Government on June 18, 1965, (vii) that the settlement had not been verified by the Conciliation Officer, (viii) that the deponent had also written a letter to the Union challenging the authority of the signatories on its behalf, and even the authority of the Union itself, to enter into the said settlement without appropriate and valid authority, (ix) that the deponent could not read or write Hindi or English except that he could sign his name in English and (X) that out of 88 employees 53 had authorised the Sangh to take up the deponent's case with the result that espousal by his co-employee workers was continuous. In the affidavit of Shri Deoki Nandan Agarwal, on behalf of the Management, sworn on November 4, 1965,

it was affirmed inter alia (i) that the Management and the Union had on June 9, 1965 entered into two settlements, one relating to the industrial dispute case No. 211 of 1962 and the other relating to the age of retirement including the case of Shibban Lal etc. pending before the Conciliation Officer. The settlement relating to the Industrial Dispute Case No. 211 of 1962 had been made an award of the Court and the other settlement relating to the age of retirement had been filed before the Conciliation Officer, copies of both the settlements having been forwarded to Government authorities, (ii) that Shibban Lal being the President of the Union, at the time of settlement, was bound by it and (iii) that the Sangh, having not espoused the cause of Shibban Lal before September 2, 1965, the date of reference, could not do so thereafter; nor could any other member of the Union take up his cause after the settlement dated September 6, 1965.

The application for substitution was finally heard oil December 17, 1965 when Shri D. R. Gupta, on behalf of the Sangh stated that he did not want the Sangh to be substituted in place of the Union but he merely wanted it to represent Shibban Lal, who was at that time its member. Shri G. C. Bhandari, on behalf of the Management, did not object to Shibban Lal being represented by the Sangh and he confined his objection only to Shibban Lal's cause being espoused by the Sangh after the order of reference. The Tribunal accordingly allowed the Sangh to represent Shibban Lal. Up to that stage the Management did not press the point that there was no valid statement of claim filed on behalf of Shibban Lal and the validity of the claim filed by the Sangh had been apparently assumed. The Management was perhaps at that time only thinking of questioning the existence of industrial dispute on the ground that Shibban Lal's dispute was an individual dispute, not being espoused by any union of workmen.

The validity of the statement of claim filed by the Sangh was mooted and pressed in one of the preliminary objections which gave rise to preliminary issue No. 1 reproduced earlier in this judgment. On this issue, as already observed, the Tribunal decided that the claim filed by the Sangh should be deemed to have been filed on behalf of Shibban Lal. The respondent's counsel did not challenge the correctness of this view of the Tribunal and it was not the respondent's submission before us that there was no proper statement of claim on behalf of Shibban Lal. In this Court also special leave application is supported by an affidavit sworn by Shibban Lal, the workman concerned. The special leave application and the, appeal must, therefore, be held to have been filed in this Court by the Sangh as representing Shibban Lal, who apparently agreed to be so represented by the Sangh. On the facts and circumstances of this case, we do not think that the present appeal can be considered to be unauthorised and legally incompetent on the technical ground urged on behalf of the respondent and we do not find any cogent ground to reject the appeal on the basis of the preliminary objection.

We now turn to the merits of the controversy. The Tribunal took the view that the dispute regarding retirement age of Shibban Lal ceased to be an industrial dispute because of the settlement dated June 9, 1965 and, therefore, it could not be referred to it for adjudication. Support of his case by the workers of any other Union after reference could not in its view validate the reference. The appellant's learned counsel challenged this view and drew our attention to r. 58 of the Industrial Disputes (Central) Rules, 1957 made under S. 38 of the Industrial Disputes Act, 1947. This rule reads as under :

"58. Memorandum of settlement:

(1) A settlement arrived at in the course of conciliation proceedings or otherwise shall be in form 'H' (2) the settlement shall be signed-

(a) in the case of an employee, by the employer himself, or by his authorised agent, or when the employer is an incorporated company or other body corporate, by the agent, manager or other principal officer of the corporation;

(b) in the case of workmen, by any officer of a trade union of workmen or by five representatives of workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

Explanation-In this rule "officer" means any of the following officers, namely-

(a) the President;

(b) the Vice-President;

(c) the Secretary (including the General Secretary);

(d) a Joint Secretary;

(e) any other officer of the trade union authorised in this behalf by the President and Secretary of the Union.

(3) Where a settlement is arrived at in the course of conciliation proceeding the Conciliation Officer Shall send a report thereof to the Central Government together with a copy of the memorandum of settlement signed by the parties to the dispute.

(4) Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or a Concilia-

tion Officer, the parties to the settlement shall jointly send a copy thereof to the Central Government, the Chief Labour Commissioner (Central) New Delhi, and the Regional Labour Commissioner, New Delhi, and to the Conciliation Officer (Central) concerned."

Form 'H' may also now be reproduced "Form for Memorandum of Settlement Name of parties Representing employer (s) Representing workmen :

Short recital of the case Terms of settlement Witness Signature of the parties Signature of Conciliation Officer Board of Conciliation Copy to:

(1) Conciliation Officer (Central) (here enter the office address of the Conciliation Officer in the local area concerned). (2) Regional Labour Commissioner (Central)....

(3) Chief Labour Commissioner (Central) New Delhi (4) The Secretary to the Government of India, Ministry of Labour, New Delhi."

The plain reading of the rule and the Form, according to the appellant, clearly suggests its mandatory character. It was contended that the settlement was not entered into with the concurrence of he Conciliation Officer nor was it entered during the conciliation proceedings. Particular emphasis was laid on noncompliance with sub-rule (4). The settlement, in the circumstances, was urged to be invalid and the reference of the dispute quite in accordance with law. In this connection the learned advocate referred to s. 18 of the Industrial Disputes Act, 1947 which is as follows :

"Persons on whom settlements and awards are binding

18. (1) A settlement arrived at by agreement between the employer and workmen (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 became 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 in a case where a notification has be-en 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;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, Arbitrator, 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."

The decision in The Bata Shoe Co. (P) Ltd. v. D. N. Ganguly(l) was cited in support of the submission that a settlement during the conciliation proceedings to be binding must be arrived at with the assistance and concurrence of the Conciliation Officer.

The respondent's learned Advocate in reply obliquely sug- gested in this connection that the Management and the Union were free to arrive at a settlement of their dispute and if they agreed to do so then the agreement could not but be held to be (1) [1960] 3.S.C.R. 308.

binding. We do not think the Management and the Union can, when a dispute is referred to the Conciliation Officer, claim absolute freedom of contract to arrive at a settlement in all respects binding on all workmen, to which no objection whatsoever can ever be raised by the workmen feeling aggrieved. The question of a valid and binding settlement in such circumstances, is in our opinion, governed by the statute and the rules made thereunder. Reliance was next placed on s.18(1) to support the binding character of the settlement. This sub-section for its pro- per construction must be read with the other sub-sections and the relevant rules, in the light of the definition of 'settlement' as contained in s. 2(p) of the Industrial Disputes Act. 'Settlement' as defined therein means settlement arrived at in the course of conciliation proceeding 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 prescribed and a copy thereof has been sent to the appropriate Government and the Conciliation Officer. In the light of these provisions we do not think that s. 1 8 (1) vests in the Management and the Union unfettered freedom to settle the dispute as they please and clothe it with a binding effect on all workmen or even on all member workmen of the Union. The settlement has to be in compliance with the statutory provisions.

It was then contended by Shri Daphtary that non-compliance with r. 8 8 (4) having not been pleaded by the appellant before the Tribunal, no question of proof by the respondent of compliance therewith arose. This plea, it was strongly objected, should not be allowed to be raised at this late stage in this Court.

We 'are not impressed by this submission. On reference hav- ing been made by the Government to the Tribunal, if the respondent wanted to show that this reference was invalid because of a lawful settlement, then it was incumbent on the party relying on such a settlement to prove that it was lawful and valid, rendering the reference illegal. This was particularly so when we find that Shibban Lal had in his affidavit expressly asserted that the settlement relied upon had not been filed before the Conciliation Officer prior to June 18, 1965 when he sent his failure report and also that the two persons entering into the settlement had no authority either from the Union or from the members thereof to enter into a binding agreement. Section 38 of the Industrial Disputes Act empowers the appropriate Government to make rules for the purpose of giving effect to the provisions of the Act. Rules made by the Central Government have to be laid before each House of Parliament while in session for a period of 30 days and the Houses of Parliament are given an opportunity of not only modifying them but even of deciding that the rules should not be made at all.

These rules thus appear to us to have full force of law of which judicial notice has to be taken. It was therefore incumbent on the Tribunal to satisfy itself that the settlement relied upon by the respondent in support of the plea of it legality of the reference, which vitally affected its jurisdiction, was in accordance with the provisions of both Industrial Disputes Act and the relevant statutory rules. This was all the more so in view of the pleas contained in Shibban Lal's affidavit produced before the Tribunal to which reference has already been made in this judgment. Though no reference was specifically made to r.58, the facts affirmed were reasonably clear to attract the attention of the Tribunal to the question of legality of the settlement. Bearing in mind the object of the Industrial Disputes Act and the important public purpose which it is designed to serve, the Tribunal, in our view, had an obligation to make a deeper probe into the validity of the settlement and not to accept it casually. However, on the respondent's argument that r.58 had not been specifically relied upon by the appellant before the Tribunal we felt inclined and indeed suggested to the respondent during the course of arguments that the case might be submitted to the Tribunal for the purpose of deciding the question of compliance with the said rule, particularly with sub-rule (4). But the respondent's learned Advocate with his usual fairness, frankly pointed out that remand for this purpose would not be of much use because this sub-rule had not been complied with in terms. A faint suggestion thrown at once stage that it had been substantially co 'lied with was not seriously pressed though our attention was drawn in that connection to a letter written by the Management on July 16, 1965 to the Secretary, Ministry of Labour, Government of India, enclosing a copy of the settlement arrived at by the Management and the Union in connection with the matters stated therein. The settlement was said to contain the following

1. Age of retirement

2. Case of Shri Shibban Lal

3. Case of Shri Mansuka

4. Case of 7 Kahars

5. Case of reduction in pay of 12 workmen

6. Case of Shri Jagan Nath

7. Case of Shri Chiranjilal Pahalwan.

This letter quite clearly does not amount to compliance with the rule. Keeping in view its object and purpose, this rule does seem to demand full compliance in order to clothe the settlement with a binding character on all workmen.

We may observe here that we were not impressed by the appellant's argument that r.58 sub-rule (2)(b) required that the officer of a trade union of workmen must also be duly authorised. We, however, do not express any considered opinion in view of our conclusion on other points. In the result this appeal must be allowed and the impugned order set aside. As the respondents have

conceded that there is no compliance with r. 5 8 (4) the settlement in regard to the dispute referred to the Tribunal, must, therefore, be held to be illegal. The case, has, therefore, to go back to the Tribunal for adjudication upon the dispute on the merits. The respondent should pay the appellant's costs in this Court.

Y.P. Appeal allowed.