Supreme Court of India
The K C P Limited vs The Presiding Officer & Ors on 12 September, 1996
Author: M S.B.
Bench: Majmudar S.B. (J)

PETITIONER:
THE K C P LIMITED

Vs.

RESPONDENT:
THE PRESIDING OFFICER & ORS.

DATE OF JUDGMENT: 12/09/1996

BENCH:
MAJMUDAR S.B. (J)
BENCH:
MAJMUDAR S.B. (J)
AHMADI A.M. (CJ)
KIRPAL B.N. (J)

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.B. Majmudar, J.

Leave granted.

This appeal by special leave arises out of the judgment and order dated 4th April, 1995 of the High Court of Judicature at Madras in Writ Appeal No. 1186 of 1993. A Division Bench of the High Court dismissed the appeal of the appellant company and confirmed the judgment and order of the learned Single Judge in writ petition No. 611 of 1993 dismissing the same.

A few relevant facts leading to this appeal deserve to be noted at the outset. The appellant is having an Engineering Unit at Tiruvottiyur, Madras where it manufactures machinery for sugar, cement and allied industries and employs about 500 workmen. Respondent No. 2 is the only recognized and a representative union of all the workmen in the said establishment. In the past all industrial disputes were settled by the appellant company on the basis of long time settlements entered into with the 2nd respondent union, the last of which was dated December 30, 1991.

In September, 1990 when the issue of bonus for the financial year 1989-90 was under consideration the workmen at the instance of 2nd respondent union resorted to go slow insisting the appellant to pay more bonus even though as contended by the appellant under the provisions of the Payment of Bonus Act only minimum bonus of 8.33% of the earned wages was payable for the financial year 1989-90. The go slow resorted to by the workmen resulted in total stoppage of work and an alleged illegal strike on and from October 26, 1990. It is the case of the appellant that in view to protect personal security of the Supervisory and Managerial staff, it had to declare a lock out on October 39, 1990. The appellant also chargesheeted 29 workmen including respondents 3 to 14 herein on November 5, 1990 for various acts of miscount allegedly committed by them between September 25, 1990 and October 29, 1990 when the workmen has resorted to go slow and other alleged violent acts of misconduct.

The explanation given by 29 workmen having not been found satisfactory the appellant decided to hold inquiry into the charges involved against the said 29 workmen. Inquiries were conducted by the two retired District Judges and during the inquiries all the 29 workmen participated in the inquiry proceedings which continued from January 8, 1991 to August 21, 1992.

On October 31, 1990 the Government of Tamil Nadu intervened and initiated conciliation proceedings to bring about settlement in respect of the pending disputed including lock out. As on settlement take place during conciliation proceedings, the conciliation Officer submitted report to the Appropriate Government on April 9, 1991. On May 7, 1991 the Government of Tamil Nadu issued three different orders referring certain industrial disputes for adjudication. G.O.No. 485 was in respect of revision of scale of pay, revision of dearness allowance, revision of house rent allowance etc. By G.O.No. 486 the Government of Tamil Nadu declined to refer certain disputes such as leave facility, housing scheme, medical facilities etc. for adjudication by giving reasons in the said G.O. No. 486. The third G.O. No.487 was issued under Section 10-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") directing the appellant to lift lock out on or before 13.5191 and allow all except 29 workmen to resume work. In the said G.O. No. 487 the appellant was directed to maintain status quo obtaining prior to the date of the lock out in regard to the terms and conditions of service and the appellant was further directed to complete inquiry proceedings against 29 workmen on or before 10.6.1991 and to pay them full wages during the period of disciplinary proceedings. In the said G.O. No. 487 the workmen were directed to maintain normal production which they were giving prior to the date of the High Court order and also to maintain discipline in the factory. By August 19,1991 inquiries in respect of all the 29 workmen were completed and on the basis of the findings by the Inquiry Officer and other extenuating circumstances, the 29 workmen were dismissed from service between 23.8.1991 to 1.10.1991.

In a meeting held before the Joint Commissioner of Labour on October 4, 1991 between the appellant and the 2nd respondent, an agreement was reached on the quantum of increase in wages, recoverable advance and issue of bonus for the years 1989-90 and 1990-91. It was further agreed that the issue of non-employment of 29 dismissed workmen would be discussed separately and on that basis all workmen except the said 29 workmen agreed to resume work in a phased manner not later than October 12, 1991 although the lock out was lifted on May 13, 1991.

Subsequently, a settlement was arrived at between the appellant and the 2nd respondent under Section 12(3) of the Act wherein it was agreed that the issue of non-employment of 29 dismissed workmen would be discussed in the proceedings to be initiated by the Joint Labour Commissioner as early as possible. The joint Labour Commissioner held meetings between January 8, 1992 and March 6, 1992 and as no settlement could be reached report with regard to failure of the conciliation proceedings was submitted to the Government of Tamil Nadu which by order dated 13.5.1992 referred the issue of non-employment of 29 workmen for adjudication to the I.D.No. 708 of 1992 on the file of the 1st respondent. The said industrial dispute was referred for adjudication pursuant to the demand espoused by all the workmen and raised by the 2nd respondent union under Section 2(k) of the Act. All the said 29 workmen who were members of the union has also authorised the 2nd respondent to represent them before the Conciliation Officer whereafter reference was made to the 1st respondent. None of the said 29 workmen raised industrial dispute in their individual capacity under Section 2A of the Act.

It appears that thereafter the appellant company on the one hand and second respondent - union on the other held discussions regarding non-employment of 29 workmen. Ultimately on 7th November, 1992 an understanding was reached between the appellant and the 2nd respondent - union that option would be given to the said 29 workmen either to accept reinstatement without backwages or a lumpsum amount of Rs. 75,000/- with other monetary benefits may be accepted by the concerned workmen.

Respondent Nos. 3 to 14 (in all 12 workmen) out of these 29 workmen did not accept the proposed settlement and accordingly addressed a letter to the Commissioner of Labour on 2nd December, 1992. Thereafter, the 2nd respondent entered into a settlement with the appellant company under Section 18(i) of the Act on behalf of all the 29 workmen whose industrial dispute with regard to non-employment was espoused and raised by it under Section 2(k) of the Act. On 14th December, 1992 a comprehensive settlement was arrived at and signed by the appellant and the 2nd respondent - union. Copies of the said settlement were forwarded to various authorities as contemplated under the provisions of the and Rules thereunder.

A joint memorandum signed by the respondent No.2 and the appellant company was filed before Presiding Officer. First Additional Labour Court, Madras, respondent No.1 herein, before whom the industrial dispute was pending for adjudication. It was requested that an award in terms of the settlement may be passed in the pending industrial dispute reference No. 708 of 1992. However, respondent No.1, by his order dated 28th December, 1992 declined to make an award in terms of the settlement dated 14th December, 1992 on the ground that the respondent Nos.3 to 14 have not approved the settlement and therefore industrial dispute in respect of these respondents will continue and proceed further. It may be stated that out of the 29 dismissed workmen in connection with whose dismissal, respondent No.2 - union had raised the industrial dispute under Section 2(k) of the Act. 17 workmen had already agreed to abide by the terms of the settlement and had got reinstated in exercise of their option. Only the remaining 12 dismissed workmen, respondent Nos. 3 to 14 herein, proceeded with the dispute and did not agree to the terms of the settlement even though admittedly they were members of the respondent NO.2 - union who was acting on their behalf and even till date they have continued to be the members of the said union.

As the 1st respondent decided to continue the reference in connection with respondent Nos. 3 to 14 the appellant company filed Writ Petition No. 611 of 1993 before the Madras High Court. As seen earlier, the learned Single Judge by his judgment and order dated 29th September, 1993 dismissed the said Writ Petition. The appellant thereafter moved the Division Bench of the High Court in appeal which also got dismissed on the 4th April, 1995 and that is how the appellant company has moved this appeal on special leave.

Learned counsel for the appellant company vehemently submitted that when respondent No. 2 - union had espoused the cause of all the 29 dismissed workmen, and the reference was got made by it under Section 2(k) of the Act, the union which represented all the workmen including the dismissed respondents 3 to 14 was entitled to act on behalf of all of them by way of collective bargaining and could legitimately enter into the settlement which was for the benefit of all concerned workmen. Under these circumstances, individual workmen had no independent right to contest their dismissal orders and were bound by the settlement which was not shown by them to be in any way ex-facie, unfair or unjust that it was a package deal entered into by respondent No. 2 - union with the appellant company and in such a collective industrial bargaining there was always give and take that there were no exceptional grounds for rejecting such a settlement which was for the benefit of all concerned workmen and the Labour Court ought to have acted upon the same. Consequently, the order of the Labour Court refusing to act upon said settlement so far as respondent Nos.3 to 14 are concerned, was patently erroneous in law and hence, the order of the learned Single Judge of the High Court confirming such order of respondent No. 1 and further order of the Division Bench also equally suffered from patent errors of law. In support of these submissions, various decisions of this Court were cited to which we will refer a little later.

Learned counsel for respondent Nos. 3 to 14 on the other hand submitted that though these respondents were admittedly members of the respondent - union, they had not accepted the terms of the settlement and the said settlement was not binding on them; that in fact, according to the learned counsel, a settlement was arrived at by respondent No. 2 - union not on behalf of these contesting workmen but only for the remaining 17 workmen who had accepted the settlement by giving it in writing to the President of respondent No. 2 - union. He also tried to submit that in any case, the settlement was not fair and just as the workmen were required to give up all the back wages even though they were given reinstatement with continuity of service and they were further required to give a letter in writing to the Management stating that they would acquit themselves in an orderly manner and would assure that they would not give room for any misconduct and disciplinary action in future. It was submitted that under these circumstances the contesting respondents were entitled to insist that their dispute should be adjudicated on merits by the Labour Court.

Having given our anxious consideration to these rival submissions, we find that the terms of the settlement cannot be considered to be in any way exfacie, unjust or unfair and that the said settlement consequently must be held to be binding on these contesting workmen also.

It has to be kept in view that the industrial dispute was raised by respondent No. 2 - union on behalf of all the 29 workmen who were dismissed from service by the appellant company. It was an industrial dispute as defined by Section 2(k) of the Act raised by the union on behalf of its members.

Respondents Nos. 3 to 14 were at the relevant time, members of the union and even till date they continue to be the members of the sponsoring union. This was not a reference raised by a dismissed employee as per Section 2A of the Act. Consequently, as which was incharge of the proceedings and could represent all the 29 dismissed workmen on whose behalf the dispute was raised by it. When the said union having considered the pros and cons of the situation, entered into the settlement on behalf of all the workmen from whom it had taken cudgels unless the said settlement was found to be ex-facie, unjust or unfair it could not be gone behind by these respondents who can be said to be parties to the same through their representative union - respondent No. 2. In this connection a reference is also required to be made to Section 18(1) of the Act which lays down as under:

> "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.

It is not in dispute that the settlement arrived at by respondent No. 2 - union with the appellant company was not in the course of conciliation proceedings. Therefore, it would be binding to the parties to the agreement, namely, the appellant company on the one hand and respondent No. 2 - union representing all the 29 dismissed employees, who wee its members and on whose behalf it had raised the industrial dispute under Section 2(k) of the Act, on the other.

Section 2(p) of the Act defines a settlement to mean a settlement arrived at in course of conciliation proceedings and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceedings 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 an officer authorised in this behalf by the appropriate Government and the Conciliation Officer.

It is also not in dispute that parties to the settlement were the appellant company on the one hand and respondent No. 2 - union on the other, which acted on behalf of all the 29 dismissed workmen for whom reference was pending in the Labour Court. It was duly signed by both these parties. Under these circumstances, respondent Nos. 3 to 14 also would be ordinarily bound by this settlement entered into by their representative union with the company unless it is shown that the said settlement was ex-facie, unfair, unjust or malafied. No such case could be even alleged much less made out by the dissenting respondent Nos. 3 to 14 before the trial court. It is interesting to note that before the Labour Court the only argument put forward on behalf of the respondent Nos 3 to 14 was that they were not parties to the settlement and therefore, it was not binding on them. Once it is kept in view that the entire industrial dispute was raised by respondent No. 2 union on behalf of all the 29 dismissed workmen and as it was not an industrial dispute covered by Section 2A whereunder individual dismissed workman could come in the arena of contest, it could not be held, as wrongly assumed by the Labour Court that this settlement was not entered into under Section 18(1) of the Act by these dissenting workmen when the respondent - union did represent then from beginning to end and is still representing them as they are members of the union even at present. In the case of Ram Prasad Vishwakarma vs. The Chairman Industrial Tribunal 1961 (3) SCR 196 a Bench of three Hon'ble Judges of this Court had an occasion to consider the effect of a settlement entered into by the union of workmen which had espoused the cause of its members by raising an

industrial dispute under section 2(k) of the Act and further question whether under these circumstances an individual workman had any independent locus standi in proceedings before the reference court. Rejecting the contention on behalf of the individual workman, it was observed by Das Gupta, J. speaking for the court that the concerned workman was not entitled to separate representation when already represented by the Secretary of the union which espoused his cause. A dispute between an individual workman and an employer cannot be an industrial dispute as defined in Section 2(k) of the Act unless it is taken up by a union of workmen or by a considerable number of workmen. When an individual workman becomes a party to a dispute under the Act he is a party, not independently of the union which has espoused his cause. It was further observed that although no general rule can be laid down in the matter, the ordinary rule should be that representation by an officer of the trade union should continue throughout the proceedings in the absence of exceptional circumstances justifying other representation of the workman concerned.

It is true that the said decision was rendered prior to the insertion of Section 2-A in the Act by which individual workmen were also given a right to raise industrial dispute in case of discharge, dismissal or retrenchment or otherwise termination of service. It is also true that the present controversy has arisen after the coming into operation of Section 2-A but as noted earlier the industrial dispute raised for 29 dismissed workmen was raised by the union - respondent no.2 under Section 2(k) of the Act and there was no reference under Section 2-A of the Act, so far as respondent nos. 3 to 14 are concerned.

In the case of Herbertsons Ltd. v. The Workmen of Herbertsons Ltd. and Ors. AIR 1977 SC 322 another Bench of three learned Judges of this court considered the effect of a settlement arrived at by recognised union of majority of workers pending appeal to Supreme Court. It was observed by Goswami, J., speaking for the Court that when a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour enteres into a settlement in the best interests of labour. This would be the normal rule. There may be exceptional cases where there may be allegations of mala fides, fraud or even corruption or other inducements. But in the absence of such allegations a settlement in the course of collective bargaining is entitled to due weight and consideration.

In connection with the justness and fairness of the settlement it was observed that this has to be considered in the light of the conditions that were in force at the time of the reference. When, therefore, negotiations take place which have to be encouraged, particularly between labour and employer in the interest of industrial peace and well-being, there is always give and take. The settlement has to be taken as a package deal and when labour has gained 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. It was further observed that 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 other advantages gained the Court will slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole. It has to be kept in view that under the scheme of labour legislations like the Act in the present case, collective bargaining and the principle of industrial democracy permitted the relations

between the management on the one hand and the union which resorts to collective bargaining on behalf of its members-workmen with the management on the other. Such a collective bargaining which may result in just and fair settlement would always be beneficial to the management as well as to the body of the workmen and society at large as there would be industrial peace and tranquility pursuant to such settlement and which would avoid unnecessary social strife and tribulation on the one hand and promote industrial and commercial development on the other hand. Keeping in view the aforesaid salient features of the Act the settlement which is sought to be impugned has to be scanned and scrutinized and collective bargaining is always to be preferred for it is the best guarantee of industrial peace which is the aim of all legislations for settlement of labour disputes. In order to bring about such a settlement more easily and to make it more workable and effective it may not be always possible or necessary that such a settlement is arrived at in the course of conciliation proceedings which may be the first step towards resolving the industrial dispute which may be lingering between the employers and their workmen represented by their unions but even if at that stage such settlement does not take place and the industrial dispute gets referred for adjudication, even pending such disputes, the parties can arrive at amicable settlement which may be binding to the parties to the settlement unlike settlement arrived at during conciliation proceedings which may be binding not only to the parties to the settlement but even to the entire labour force working in the concerned organization even though they may not be members of the union which might have entered into settlement during conciliation proceedings. The difference between the settlement arrived at under the Act during conciliation proceedings by parties and the settlement arrived at otherwise than during conciliation proceedings has been succinctly brought out by the decision of this Court in Barauni Refinery Pragatisheel Shramik Parishad etc. etc. v. Indian Oil Corporation Ltd. etc. etc. (1991) 1 SCC 4 wherein Ahmadi, J. (as His Lordship then was) spoke for the Court to the following effect :

> "Settlements are divided into two categories, namely, (i) those arrived at outside the conciliation proceedings [Section 18(i)] and
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> (ii) those arrived at in the course of conciliation proceedings [Section 18(3)]. A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement. But a settlement arrived at in the course of conciliation proceedings with a recognized majority union has extended application as it will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the union signing the settlement but also on the others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicatory authority.

As in the present case the settlement arrived at between the parties was not during conciliation proceedings, it would remain binding to parties to the settlement as per Section 18(1) of the Act. But as we have seen above, respondent no. 2 union while entering into that settlement acted on behalf of all the 29 dismissed workmen who were its members including the present respondent nos.3 to 14 who are also its members as noted earlier. We have also seen earlier that the Labour court had erred in taking the view that respondents 3 to 14 were not parties to the said settlement as individually they had no locus standi and they were represented by their union respondent no.2 which had signed the settlement on behalf of its members for whom the dispute was raised by the union. Nothing could be alleged by respondents 3 to 14 to the effect that the said settlement was in any way unjust or unfair or was a mala fide one. There were no exceptional circumstances to reject this settlement qua even the contesting respondents. However, as learned counsel for the respondent-workmen tried faintly to suggest to the effect we have carefully gone through the circumstances which are brought on record which had led to the settlement. It may be noted that about 500 workmen had done on strike and that had resulted in the lock-out by the appellant company and ultimately disciplinary action was initiated against 29 workmen who had indulged into various acts of misconduct. It is for these 29 workmen who were ultimately dismissed from service that the respondent-union had raised a dispute under Section 2(k) of the Act on their behalf. Earlier the remaining workmen had gone on strike for nearly 5 months. Ultimately, the strike was withdrawn; lock- out was lifted and a broad understanding was reached between the appellant company and the workmen represented by their union whereby it was agreed that 29 workmen, who were dismissed, would be either given Rs75,000/- as compensation or reinstatement with continuity of service without back wages and the concerned workmen should express apology for mis-conduct and also assure good conduct in future.

Out of 29 workmen for whom the industrial dispute was raised 17 workmen agreed and accepted settlement and joined the service. Remaining 12 workmen (respondent nos.3 to 14) have not agreed to the said settlement. It is under these circumstances that the settlement arrived at by the union on behalf of all of them has to be scrutinized. It has clearly transpired on the record of this case that all the 500 workmen excluding 29 dismissed workmen and had struck the work. Ultimately, when they were reinstated in service leaving aside the 29 workmen for whom industrial dispute lingered on, all the remaining workmen lost their wages from 20.10.1990 to 21.5.1991 and also from 13.5.1991 to 6.10.1991. They lost their wages because they were expressing sympathy for their 29 colleagues who were facing disciplinary action and even for these 29 workmen respondent no.2 union entered into a settlement so that they could be reinstated in service with continuity of service or could walk out from service with Rs.75,000/- and other monetary benefits. All that was agreed to by the union as a condition for reinstatement was that the workmen would be give up back wages and had to sign a written undertaking to behave properly in future. In our view there was nothing unreasonable or unfair in these terms of settlement. The relief of reinstatement without back wages could not be said to be unreasonable as for nearly 12 months all other workmen lost their back wages only because they supported the cause of these colleagues of theirs and hence there was no reason why the workmen who indulged in the acts of misconduct and who were also to be taken in service should not lose their wages for 12 months. Relief of reinstatement was made available to respondents 3 to 14 on the same line as it was made available to their 17 remaining colleagues who were covered by the very same settlement and who accepted the relief of settlement without back wages or a

lumpsum compensation of Rs.75,000/- and other monetary benefits in lieu of that. In our view such a package deal entered into by respondents no.2 in the best interest of these workmen could not be said to be unfair or unjust from any angle. On the contrary, if the back wages were given to them, then the remaining workmen against whom there was no disciplinary action or any alleged misconduct and who had also lost wages for 12 months only because they were in sympathy with these 29 dismissed workmen would have stood discriminated against. Consequently, it is not possible to agree with the learned counsel for respondents nos.13 to 14 that the said settlement was in any way unfair or unjust. Once this conclusion is reached it is obvious that the entire industrial dispute should have been disposed of in the light of this settlement and an award in terms of the settlement should have been passed by the first respondent-court in the case of respondents 3 to 14 also. Consequently, the judgement and order of the Division Bench of the High Court dated 4th. April, 1995 and the order of the learned Single Judge dated 29th September, 1993 are quashed and set aside. The writ petition filed by the appellant company will stand allowed with a direction to the first respondent-Labour Court to pass award in terms of the settlement dated 14th December, 1992 by treating it to be binding to respondent nos. 3 to 14 also.

Learned Counsel for these respondents ultimately submitted that the time during which the concerned workmen had to exercise their option as per the terms of the settlement is now over and the appellant company may not make available the said option to them. His apprehension on behalf of the respondents was set at rest by learned counsel for the appellant company who stated that the appellant company is willing to make available the option to these respondent nos. 3 to 14 to either accept reinstatement with continuity of service without back wages on their executing the writing as per the said settlement or to be paid Rs.75,000/- each in addition to gratuity as per the payment of Gratuity Act, wages for unavailed leave and bonus, if any payable.

In view of this fair stand taken by the appellant company it is directed that if the respondent nos. 3 to 14 exercise their option as per the procedure laid down in the settlement dated 14th December 1992 either to get reinstatement without back wages for the period of non- employment and with continuity of service or to accept a lumpsum monetary compensation as laid down in the settlement within a period of 8 weeks from today, the appellant company will act upon the said option exercised by the said workmen and shall give appropriate benefit of the option as per the settlement to the concerned workmen. As the period of lumpsum payment of Rs.75,000/- by instalments (as laid down by the settlement) is already over, it is directed that if any of the concerned workmen-respondents 3 to 14 exercises the option of receiving the lumpsum amount of Rs.75,000/- in lieu of the reinstatement, a sum of Rs.40,000/- out of the said amount shall be paid to the concerned workmen within 15 days of the exercise of such option and the balance of Rs.35,000/- with other monetary benefits as indicated in the settlement shall be paid to the concerned workmen within a further period of 2 months thereafter.

The appeal is allowed in the aforesaid terms. In the facts and circumstances of the case, there shall be no order as to costs.