Supreme Court of India
The Workmen Of Sur Enamel And ... vs State Of West Bengal And Ors. on 28 March, 1972
Equivalent citations: AIR 1972 SC 1895, (1972) 3 SCC 708, 1972 (4) UJ 846 SC
Author: D Palekar
Bench: C Vaidialingam, D Palekar, K Mathew
JUDGMENT D.G. Palekar, J.

1. These two appeals arise out of an Order passed by the High Court of Calcutta in appeal from the judgment of a single Judge of that court in its Writ jurisdiction.

2. The dispute which is the subject matter of these appeals arose between M/s. Sur Enamel and stamping Works (P) Ltd., on the one hand, and the Sur Enamel Sramick Union, representing the workers, on the other. The former will be described hereafter as the Company and the latter as the Sramick Union. It appears that some of the workers in the Company were also members of two other workers' Unions which operated in the Company's factory, and they are known as the Workers Union and the Employee' Association. Some Workers appear to have been members of two or more unions at the same time.

3. On February 29, 1960 the Sramick Union served a Charter of Demands upon the Company and also communicated the same to the Labour Commissioner. On May 2, 1960 the conciliation officer took up the dispute. On August 2, 1960 the first meeting in the conciliation proceedings was held with the Sramick Union and the proceedings continued for a number of months. The proceedings failed ultimately on April 12, 1962. On April 17, 1961 the Conciliation Officer, Mr.-S. Bhattacharya made a report under Section 12(4) of the Industrial disputes Act reporting the failure of the conciliation proceedings. On June 6, 1961 the State of West Bengal made a reference under the Industrial Dispute Act of an industrial dispute existing between the said Company and its workmen represented by the Sramick Union. The issue that were referred were as follows : -

(1) Revision of pay and dearness allowance.

(2) Fixation of pay-grade and scales.

(3) Profit bonus for 1959-60.

(4) Gratuity.

4. The first Industrial Tribunal to which the reference was made undertook the enquiry in due course. Pleadings were filed and on 7-9-1963 the Company presented applications before the Tribunal for framing preliminary issues, on jurisdiction. It alleged that the Company had entered into two settlements in conciliation proceedings with the other two Unions already referred to -one on May 3, 1961 and the other on 5-10-1961 and in view of these settlements the first three items of reference went ou tof the scope of the enquiry. The first settlement dated May 3, 1961 covered the first two items under reference namely (1) Revision of pay and dearness allowance and (2) Fixation of pay-grades and scales, while the second settlement dated 5-10-1961 covered the 3rd item namely

Profit bonus for 59-60. The Sramick Union contended that it was not a party to the settlements & therefore, they were not binding on it and since the State Government had already made a reference the Tribunal ought to proceed with the adjudication. This contention was accepted by the Tribunal by its Order dated September 26, 1963.

5. From that Order the Company went to the High Court in its Writ jurisdiction with a prayer for a writ in the nature of mandamus. The Company contended that in view of the settlements referred to above in conciliation proceedings the same become binding on all workmen employed in the Establishment under Section 18(3) of the Industrial Disputes Act and it was no longer open for the Tribunal to adjudicate on issues covered by the two settlements. That contention was upheld by the learned single Judge who relying on the decision of this Court in the Bata Shoe Private Ltd. v. (1) D.N. Ganguli and Ors. held that the two settlements referred to are binding on all the workmen of the Company under Section 18 of the Act. From that Order the Sramick Union went in appeal to the Bench.

6. During the course of hearing of the appeal the High Court found that neither the Tribunal nor the learned single Judge had enquired in depth as to whether in fact the settlements or agreements had been entered into in the course of conciliation proceedings. So it called for the record of the proceedings in order to satisfy itself as to whether the two settlements were in fact entered into in the course of conciliation proceedings. The parties were heard thereafter. The court found that so far as the first settlement dated May 3, 1961 is concerned it had been arrived at in the course of the conciliation proceedings. But it was not able to say the same with regard to the second agreement dated October 5, 1961. It agreed with the view of the learned single Judge that as the first settlement was during the course of conciliation proceedings it was binding on all workers. That could not be said with regard to the second. Accordingly, it quashed that part of the finding of the Tribunal which had held that the first agreement dated May 3, 1961 the case back to the Tribunal for the completion of the proceedings on matters not covered by the settlement dated May 3, 1961.

7. From that Order both parties have come in appeal to this Court by certificate. The Sramick Union's appeal is Civil Appeal No. 1639/67 and the complaint in that appeal is that the High Court was in error in holding that the first settlement dated May 3, 1961 was binding on all workers. The second appeal being Civil Appeal No. 1640/67 is filed by the Company and in that appeal the finding of the High Court that the second settlement dated October 5, 1961 was not shown to have been entered into in the course of conciliation proceedings is challenged.

8. This appeal does not fall for consideration now. It appears that a reference had been made by the State Government for the fixation of wages and dearness allowance and certain other matters in a dispute between several managements of small and medium industries and their workmen. The Company and its workmen were also parties to that reference. The reference was made in 1962 and the final award was made in 1966. Appeals were filed to this Court being Civil Appeals Nos. 603, 879, 791 and 792 of 57. These appeals were disposed of by a common judgment of this Court on January 18, 1972. (see Federation of Small and Medium Industries and Ors. v. The workmen and Ors. Civil Appeals Nos. 603, 789, 791 and 722 of 1967 decided on January 18, 1972 decided by Vaidialingam, Dua and Mitter, JJ). In these appeals the question of wages and dearness allowance

was finally disposed of, and Mr. Pai on behalf of the Company stated that in view of the above decision the two points in the reference viz. (1) Revision of pay and dearness allowance and (2) Fixation of pay-grades and scales no longer survive. Mr. Khera on behalf of the Sramick conceded that, in that case, it was unnecessary to decide this appeal here. The appeal, therefore, is dismissed.

Civil Appeal Mo. 1640 of 1967

9. Mr. Pai on behalf of the appellant Company contended that the High Court was in error in holding that the settlement dated October 5, 1961 was not arrived at in the course of conciliation proceedings. It must be noted that there was before the High Court an affidavit on behalf of the Sramick Union made by Sunil Krishna Gupta, General Secretary of the Sramick union on 13-7-1966 in which he definitely alleged that Mrs. Parul Chakraborty who as conciliation Officer is supposed to have attested the alleged settlement of 5-10-1961 and whose affidavit dated June 14, 1966 was on record was not the conciliation Officer in respect of the dispute and that there were really no conciliation proceedings relating to the so called memorandum of settlement dated October 5, 1961 between the Company and the other Unions referred to therein. In view of this categorical allegation the High Court gave an opportunity to the parties including the State Government to produce all the records in their possession with a view to determine whether these allegations were correct. No original record was produced though it appears that the State Government had tried its best to trace the record. The High Court observed "no minutes of any such conciliation proceedings resulting in the alleged agreement is traceable. The original agreement itself cannot be traced but a copy has been produced by the Labour Department which is said to be signed by ill the parties. It, however, does not say that there were, in fact any conciliation proceedings." Referring to the affidavit filed by Mrs. Parul Chakraborty on 14-6-1966 in which she had stated that the settlement was arrived at in her presence in the course of the conciliation proceedings the High Court made pointed reference to the verification Clause of that affidavit which is as follows :

The statements contained in all the paragraphs above are based on information derived from the records maintained in the Labour Directorate of the Government of West Bengal and are believed to be true.

Now, if Mrs. Parul Chakraborty was able to see the records before making the affidavit on June 14, 1966 there should have been no difficulty in producing those records for the inspection of the court. But the High Court says no such record was produced. On the other hand, the attention of the court was invited to an endorsement made by Mrs. Chakraborty in the files on 3-8-1966 which stated that the agreement dated 5-10-1961 was arrived at in the course of conciliation proceedings and signed by her as a conciliation Officer but that she did not remember whether a report under Section 12(3) of the Industrial Disputes Act was sent up to the Government as this was a matter relating to 1960-61. It is clear that Mrs. Chakraborty did not really remember whether the settlement was arrived at during conciliation proceedings. The proceedings had taken place in 1960-61 and during the pendency of the appeal in the High Court she must have been asked on the basis of the copy of the settlement which was produced in court as to what she had to say about it. She could see that there was a settlement between the Company, on the one hand, and two Unions, on the other, and below the settlement she had signed as the Conciliation officer. She could not possibly deny her

subscription to the document contained in the settlement and, at the same time, she could not remember the conciliation proceedings. So when she filed her affidavit dated June 14, 1966 she was careful to state that whatever she had stated in her affidavit was based on information derived from the record maintained in the Labour Directorate of Government of West Bengal. Later when the General Secretary Mr. Gupta filed his affidavit on 13-7-1066 alleging that there were really no conciliation proceedings at all and requested the court to direct the State Government of West Bengal to produce all the relevant records, further enquiries must have been made by the State Government from Mrs. Chakraborty and so on 3 8-1966 she made that above endorsement in the files in which she said that she did not remember whether she had made any report at all to the State Government under Section 12(3) of the Industrial Disputes Act. She affirmed, however, that the agreement was in the course of conciliation proceedings. We think she made that statement merely because she could not get away from the fact that she signed the agreement as the conciliation Officer. Neither the affidavit dt. June 14, 1966 nor her endorsement on the file dated 3-8-1966 carries the matter further because the records on which she relied upon for her affidavit on June 14, 1966 was not produced in court. If there were records for perusal on June 14, 1966 they could not all of a sudden disappear when they were called for in July 1966. It would be indeed a strange thing that if in fact there were conciliation proceedings over a period of months in which the conciliation Officer had taken a prominent part in bringing the parties together, there should be no minutes of the proceedings from time to time and not just a copy of the settlement in the records of the Department. Having regard to these considerations the High Court came to the conclusion that the settlement dated October 5, 1961 must not have been entered into in the course of the conciliation proceedings. Mr. Pai for the Company submitted that if either the conciliation Officer or the State Government does not preserve the detailed minutes in the records of the case his client the Company should not be penalised. It appears to us that the Company and the other two Unions who were also parties to the appeal could have produced evidence from their records to show how the conciliation had proceeded, on what dates they had met the Conciliation Officer Mrs. Chakraborty and how the conciliation had proceeded from time to time. Since the High Court had taken the trouble to investigate the matter more fully it was up to the parties to produce substantial evidence with regard to the conciliation proceedings. In our opinion, the finding of the High Court is unexceptionable. Consequently it has got to be conceded that the alleged agreement or settlement dated October 5, 1961 which principally related to the question of bonus cannot be regarded as binding on the workers under Section 18 of the Industrial Disputes Act. The final Order of the High Court is, therefore, correct and the appeal must fail.

10. In the result both the appeals are dismissed. There shall be no order as to costs.