

CASE NO.:
Appeal (civil) 2249 of 2006

PETITIONER:
CEAT Ltd.

RESPONDENT:
Murphy India Employees Union

DATE OF JUDGMENT: 25/04/2006

BENCH:
S.B. Sinha & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T
[Arising out of S.L.P. (Civil) No.6897 of 2005]

S.B. SINHA, J :

Leave granted.

INTRODUCTION

Interpretation of a settlement arrived at by and between the parties herein is in question in this appeal which arises out of a judgment and order dated 11.01.2005 passed by a learned Single Judge of the High Court of Judicature at Bombay in Writ Petition No.1785 of 2001.

ADMITTED FACTS

Murphy India Ltd. (Murphy) was a manufacturer of Radio and Television sets. Norwest Electronics Ltd. (for short, 'Norwest'), which was running a servicing centre, was a sister concern of Murphy India Ltd. It had been carrying out maintenance and repair works of the products of Murphy at its Thane factory. It was an establishment within the meaning of the provisions of the Industrial Employment (Standing Orders) Act, 1946, (1946 Act). The concerned workmen were on the rolls of Norwest. The Provident Fund and E.S.I.C. Code Number of both the companies were the same. Some workmen working in the said Norwest were its permanent employees. Murphy became a sick company. It was referred to the Board of Industrial and Financial Reconstruction (BIFR). Pursuant to a scheme made by it on or about 31.08.1990 Murphy merged with the appellant-company. It undertook the maintenance and repair works carried out at the factory of Murphy situated at Parel. Some of the workmen of Norwest, who were represented by the Union herein, had been assured that they would be provided with employment on permanent basis by the appellant herein. 45 workmen had applied for employment with its Electronics Division. They were issued fresh appointment letters with effect from 01.02.1991. They were initially appointed on temporary basis at Parel Unit of the appellant, wherein sales and service of the Radios and Televisions used to be carried out. Indisputably, the said establishment was registered under the Bombay Shops and Commercial Establishment Act, 1948 (for short, 'the 1948 Act').

Although initially existence of the Certified Standing Orders was denied by the appellant, a copy thereof was produced before the High Court, in terms whereof, the employees appointed on probation were to get the permanent status on the expiry of six months from the date of joining the service; whereas in terms of the Model Standing Orders, such permanent status was to be conferred on the workmen on the expiry of three months of their being placed on probation.

After Murphy. was referred to the BIFR and its consequent merger with the appellant, appointments had been given to 45 workmen on and from 01.02.1991. Although they had been appointed on temporary basis, they were put on probation by an order dated 01.05.1991 with effect from 1.2.1991. They had been kept on probation till 1996 and their services had been terminated thereafter. Termination of the services of the said workmen had given rise to another industrial dispute and it is stated at the bar that an award has been passed in favour of the workmen. The said matter, however, is pending adjudication before the Bombay High Court and the execution of the award has been stayed.

PROCEEDINGS:

On or about 29.04.1991, a Memorandum of Settlement was entered into between the Electronics Division of the appellant herein and the respondent Union, which was recognized in terms of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, 'the 1971 Act') for resolution of the disputes arising out a Charter of Demands made on 27.10.1989 in respect of the workmen working in the shop floor and office of the company situated at Thane and Parel.

On or about 06.10.1992, a complaint was filed by the respondent-Union about the violation of the terms of the said settlement, alleging unfair labour practices as contained in Item Nos. 1(a) and 4(g) of the Second Schedule and Item Nos.6 and 9 of the Fourth Schedule appended to the said Act. A prayer for payment of the same wages as are paid to the permanent workmen of the company as also a declaration that the said workmen had become the permanent workmen of the company from their respective dates of joining or with effect from 01.02.1991, was also made. The appellant denied and disputed that it had committed any unfair labour practice.

In view of the rival contentions raised before the Industrial Tribunal, the following issues were framed :

"(i) Does the Complainant prove that they are permanent employees since joining Norwest Electronics Ltd. and/or Ceat Ltd. and they are entitled to full back wages and continuity of service w.e.f. 01.02.1991?

(ii) Whether the Respondent has committed Unfair Labour Practice under Items 1(a), 4(a) of Schedule II and Item 3, 6 and 9 of Schedule IV of the MRTU & PULP Act?"

Before the Industrial Court, reliance was placed by the respondent on the said settlement dated 29.04.1991.

By reason of an award dated 29.03.2001, the Industrial Court held that the benefits under the said settlement must be held to have been rendered to the concerned workmen, in terms whereof they became entitled to the status of permanent workmen on the expiry of the period of probation of three months, and were, thus, also entitled to the other benefits envisaged thereunder. Monetary benefits were directed to be paid to the workmen with compound interest @ 12% p.a.

The legality or otherwise of the said award came to be questioned by the appellant by filing a writ petition before the Bombay High Court. The said writ petition has been dismissed by reason of the impugned judgment.

SUBMISSIONS :

Mr. T.R. Andhyarujina, the learned Senior Counsel appearing on behalf of the appellant, would submit that the Industrial Court as also the

High Court overlooked the fact that in terms of Section 18(3)(c) of the Industrial Disputes Act, 1947 (for short, 'the 1947 Act'), the benefits of the said settlement dated 29.04.1991 having been given only to the permanent workmen who were appointed with effect from 01.02.1991, benefits thereof could not have been directed to be given to the concerned workmen who joined the establishment on a temporary basis and/or on probation only with effect from 01.02.1991.

It was submitted that the High Court fell into an error in holding that despite the fact that the number of workmen had fallen to less than 50, the provisions of Model Standing Orders framed under the 1946 Act would not apply in the case of the concerned workmen.

Ms. Jane Cox, the learned counsel appearing on behalf of the respondent-Union, on the other hand, submitted that the said settlement dated 29.04.1991 must be read in its entirety and so read it would be evident that the same would also apply to such workmen who joined the services of the appellant's establishment on and from 01.02.1991. It was further submitted that applicability of the provisions of the Model Standing Orders or the Certified Standing Orders framed under the 1946 Act having been made a part of the settlement, it matters little as to whether the status of the permanent workmen was to be given to the concerned workmen on the expiry of three months or six months from the date of their joining service.

SETTLEMENT :

It is also not in dispute that a Memorandum of Settlement within the meaning of Section 2(p), read with Section 18(1) of the 1947 Act and Rule 62 of the Industrial Disputes (Bombay) Rules, had been arrived at between the parties on or about 29.04.1991, the relevant clauses whereof are as under:

"Whereas the President, MAHARASHTRA SHRAMIC SENA, a recognized Union under the Provisions of the MRTU & PULP Act, 1971 (hereinafter referred to as the Union) representing the workmen of M/s CEAT LIMITED, ELETRONICS DIVISION (hereinafter referred to as the Company) served the Charter of Demands on 27th February, 1989 on the Company in respect of the workmen working on the Shop floor and the office of the company situated at Thane and Parel under cover of their letter dated 27th February, 1989 relating to wage Scale, Classifications, Dearness Allowance, Leave Facilities, Leave Travel Allowance, Transports etc. and have also forwarded supplementary demands in relation to Lunch Allowance, Five days week working, etc. as contained in their supplementary Charter dated 9th March, 1989.

And whereas the negotiations were held between the representatives of the Company and the representatives of the Union from time to time on the said set of Charter of Demands parties have reached a package settlement covering the service conditions and terms of employment applicable to the workmen at Thane and Head Office establishment. Parties therefore have agreed to sign the settlement in full and final satisfaction of all the demands in accordance with Section 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 and under the Rules 62 of the Industrial Disputes (Bombay) Rules, 1957.

NOW THIS SETTLEMENT WITNESS AS FOLLOWS

This settlement shall cover all terms and

conditions of service of various categories of permanent workmen and shall apply to all permanent workmen (hereinafter referred to as "workmen") who are on the rolls of the Company as on 31st December, 1990 at the Company's Head Office and other Factories, establishments situated at Bombay and Thane.

"Year" means from 1st of January to 31st December of any year."

Under the heading 'Code of Conduct', it provided that the Code of Conduct shall operate concurrently with the Company's Standing Orders and not in derogation thereof. The said Code of Conduct was evolved to repress the hardship arising out of the implementation of the Standing Orders.

Clause 4 of the said settlement provides for period of apprenticeship, inter alia, stating :

"\005Upon successful completion of three years apprenticeship subject to the availability of vacancies having due regard to suitability to the post the apprentices will be offered employment and will be absorbed with due regard to seniority in regular employment under such terms and conditions prevailing for regular employees and shall be issued regular appointment letters."

Provision has been made to pay stipend to the apprentices and other benefits and facilities arising therefor. Probation of the employees was to be governed by the Standing Orders. The matter relating to confirmation of employees has been provided for in clause 8 of the settlement stating that the same would be as per the Standing Orders. Clause 11 provides for fitment in the regular grades after successful completion of three years period.

STATUTORY PROVISIONS

Section 18(1) of the 1947 Act provides as under :

"18. Persons on whom settlement and awards are binding.- (1) 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."

The State of Maharashtra indisputably has made an amendment in sub-section (1) of Section 18 of the 1947 Act, in terms whereof, the following proviso was added :

"Provided that, where there is a recognized union for any undertaking under any law for the time being in force, then such agreement (not being an agreement in respect of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee) shall be arrived at between the employer, and the recognized union only; and such agreement shall be binding on all persons referred to in clause (c) and clause (d) of sub-section (3) of this section."

Section 18(3) of the 1947 Act reads as under :

"18(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 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 \026

- (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 1971 Act was enacted, inter alia, to provide for recognition of trade unions inter alia for facilitating collective bargaining for certain undertakings. Section 4 thereof provides for constitution of the Industrial Court. Chapter III provides for recognition of Unions. Chapter IV provides for obligations and rights of recognized Unions, other Unions and certain employees. Sub-section (2) of Section 20 of the 1971 Act reads as under :

"(2) Where there is a recognized union for any undertaking, -

- (a) that union alone shall have the right to appoint its nominees to represent workmen on the Works Committee constituted under section 3 of the Central Act;
- (b) no employee shall be allowed to appear or act or be allowed to be represented in any proceedings under the Central Act (not being a proceeding in which the legality or propriety of an order or dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration), except through recognized union and the decision arrived at, or order made, in such proceeding shall be binding on all the employees in such undertaking;

and accordingly, the provisions of the Central Act, that is to say, the Industrial Disputes Act, 1947, XIV of 1947, shall stand amended in the manner and to the extent specified in Schedule I."

Section 21 of the 1971 Act provides that no employee in an undertaking to which the provisions of the Central Act for the time being

apply, shall be allowed to appear or act or allowed to be represented in any proceeding relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the recognized union.

UNFAIR LABOUR PRACTICE :

Chapter VI of the 1971 Act deals with Unfair Labour Practices, which term has been defined in Section 26 thereof to mean any of the practices listed in Schedules II, III and IV of the Act, unless the context otherwise requires.

Item Nos.1(a), 4(a) of Schedule II, and Item Nos.3, 6 and 9 of Schedule IV, which are relevant for the purpose of the case, read as under :

"1. To interfere with, restrain or coerce employees in the exercise of their right to organize, form, join or assist a trade union and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say \026

(a) threatening employees with discharge or dismissal, if they join a union;"

"4. To encourage or discourage membership in any union by discriminating against any employee, that is to say \026

(a) discharging or punishing an employee because he urged other employees to join or organize a union;"

"3. To transfer an employee mala fide from one place to another, under the guise of following management policy."

"6. To employ employees as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees."

"9. Failure to implement award, settlement or agreement."

Section 28 of the 1971 Act provides for procedure for dealing with complaints relating to unfair labour practices, in the following terms :

"28. Procedure for dealing with complaints relating to unfair labour practices : (1) Where any person has engaged in or is engaging in any unfair labour practice, then any union or any employee or any employer or any Investigating Officer may, within ninety days of the occurrence of such unfair labour practice, file a complaint before the Court competent to deal with such complaint either under section 5, or as the case may be, under section 7, of this Court.

Provided that, the Court may entertain a complaint after the period of ninety days from the date of the alleged occurrence, if good and sufficient reasons are shown by the complainant for the late filing of the complaint.

(2) The Court shall take a decision on every such complaint as far as possible within a period of six months from the date of receipt of the complaint.

(3) On receipt of a complaint under sub-section (1), the Court may, if it so considers necessary, first cause an investigation into the said complaint to be made by the Investigating Officer, and direct that a report in the matter may be submitted by him to the Court, within the period specified in this direction.

(4) While investigating into any such complaint, the Investigating Officer may visit the undertaking, where the practice alleged is said to have occurred, and make such enquiries as he considers necessary. He may also make efforts to promote settlement of the complaint.

(5) The Investigating Officer shall, after investigating into the complaint under sub-section (4) submit his report to the Court, within the time specified by it, setting out the full facts and circumstances of the case, and the efforts made by him in settling the complaint. The Court shall, on demand and on payment of such fee as may be prescribed by rules, supply a copy of the report to the complaint and the person complained against.

(6) If, on receipt of the report of the Investigating Officer, the Court finds that the complaint has not been settled satisfactorily, and that facts and circumstances of the case require, that the matter be further considered by it, the Court, shall proceed to consider it, and give its decision.

(7) The decision of the Court, which shall be in writing, shall be in the form of an order. The order of the Court shall be final and shall not be called in question in any civil or criminal court.

(8) The Court shall cause its order to be published in such manner as may be prescribed. The order of the Court shall become enforceable from the date specified in the order.

(9) The Court shall forward a copy of its order to the State Government and such officers of the State Government as may be prescribed."

We have noticed hereinbefore that the establishment in question is governed by the provisions of the 1948 Act, Section 38-B whereof reads as under :

"38-B. Application of Industrial Employment (Standing Orders) Act to establishments. The provisions of the Industrial Employment (Standing Orders) Act, 1946, in its application to the State of Maharashtra (hereinafter in this section referred to as "the said Act"), and the rules and standing orders (including model standing orders) made thereunder from time to time, shall mutatis mutandis, apply to all establishment wherein fifty or more employees are employed and to which this Act applies, as if they were industrial establishment within the meaning of the said Act."

It is, however, not in dispute that the establishment had its own certified standing orders.

INTERPRETATION OF TERMS OF SETTLEMENT :

The preamble of the settlement refers to the Charter of Demands served upon the appellant on 27.02.1989 in respect of the shop floor and office of the company situated at Thane and Parel relating to wage scale, classification, dearness allowance, leave facilities, leave travel allowance, transports etc. Supplementary demands were also raised. The parties reached a package settlement covering the service conditions and terms of employment applicable to the workmen at Thane and Head Office. The said settlement was to cover all terms and conditions of service of various categories of permanent workmen; and was to apply to all permanent workmen who were on the rolls of the company as on 31.12.1990. The said Memorandum of Settlement, indisputably, was entered into on 29.04.1991.

Does it apply only to those workmen who were on the rolls of the company as on 31.12.1990 is the question.

If the said settlement was only to apply to the permanent workmen, who were on the rolls of the company as on 31.12.1990, evidently it would not have contained any provision for appointment of apprentices, payment of stipend and probation or confirmation or their fitment.

A Memorandum of Settlement must be read in the context in which the same was made.

If the said settlement is given a narrow meaning, as has been contended by Mr. Andhyarujina, the same would defeat the purpose thereof. It may be true that by reason of a settlement, a cut-off date may be provided or the benefits be given only to a class of employees but with a view to give a proper meaning to the terms of the settlement, the court would be entitled to notice the source of the dispute. The workmen of Norwest were not on the rolls of the company; they became its employees only with effect from 01.02.1991. Their terms and conditions were already governed by the Certified Standing Orders. A Code of Conduct was required to be evolved only as regard the workmen who came on the rolls of the company after 31.12.1990.

The said Code of Conduct was evolved to repress the hardships which had already been confronted by the use of the Standing Orders of the company. It was to operate concurrently with the Certified Standing Orders. Some of the provisions in the Code of Conduct expected of the employees evidently were not governed by the Certified Standing Orders. The settlement not only provides for appointment of apprentices, who would be governed by the provisions of the Apprentices Act, 1961 but also for the eligibility criteria therefor in terms whereof the first preference was to be given to the sons and daughters of the employees and the ex-employees of the company, had either retired from service or accepted Voluntary Retirement Scheme, or expired during service. The eligibility criteria also provides that the applicant should complete 18 years of age as on the date of application. Indisputably, in terms of the provisions of the Apprentices Act, no apprentice would have a right of a job or promotion. The Memorandum of Settlement, however, provides for their absorption on successful completion of three years' apprenticeship. It provides for seniority and furthermore lays down criteria for determination thereof.

The provisions relating to probation and confirmation of the workmen would not fit in with the concept of applicability of the settlement only to those who were on the permanent rolls of the company as on 31.12.1990. Evidently, thus, the said settlement not only covers those who were permanent workmen as on the said date and had ceased to be workmen but

also those who were to be appointed at a later date.

CERTIFIED STANDING ORDERS :

Applicability of the provisions of the 1948 Act is not in question. The only contention raised is the applicability of the Model Standing Orders. The fact that the company had its Certified Standing Orders is not in dispute. The same finds reference in the Memorandum of Settlement itself.

The period of probation as also confirmation in the services were to be in terms of the Standing Orders. It has not been disputed before us that whereas the Model Standing Orders provided for a successful period of probation of three months; under the Certified Standing Orders, the period thereof was to be six months.

We have noticed hereinbefore that the appellant at one stage denied and disputed the applicability of the Model Standing Orders and only at a latter stage, in a proceeding before the High Court, they produced a xeroxed copy of the Certified Standing Orders, evidently with a view to show that the successful period of probation was not three months as per the Model Standing Orders but in fact was six months.

In this case, whether the period of probation was three months or six months is not of much significance; as the workmen had been kept on probation by an order dated 01.05.1991 with retrospective effect from 01.02.1991. Evidently they were, thus, entitled to the status of permanent workmen on completion of six months' period if not three months. They were kept on probation till 1996 and, thus, they had admittedly completed the period of six months. Once they had successfully completed the period of probation, they were entitled to the status of permanent workmen, the consequences whereof would be that they became entitled to all the benefits and privileges in terms of the settlement as permanent employees.

APPLICABILITY OF 1948 ACT

Mr. Andhyarujina's submission that having regard to the fact that the number of workmen in the said establishment was less than 50 as is provided for in Section 38-B of 1948 Act, is again of not much significance.

It may be true that provisions of the Payment of Gratuity Act, 1972 and the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 specifically provide that in the event an establishment becomes liable thereunder, it would continue to be so despite the fact that the number of workmen goes below the prescribed limit, but in this case, we are not beset with such a question.

We need not enter into the controversy as to whether such a contingency would ensue even in respect of the employees governed by the 1948 Act; inasmuch as in the instant case, the Certified Standing Orders forms part of the settlement itself. The Certified Standing Orders, therefore, govern the terms and conditions of the service of the workmen apart from those which were specifically mentioned in the Settlement.

We, thus, do not find any force in the said submission.

INTEREST:

Mr. Andhyarujina would submit that the rate of interest awarded by the High Court being 12% p.a. is on a high side. We, in the peculiar facts and circumstances of the case and having regard to the current rate of interest prevailing in the market, direct that the rate of interest would be 9% p.a.

Subject to the modification aforementioned, this appeal is dismissed. The appellant shall pay and bear the costs of the respondent in this appeal. Counsel fee assessed at Rs. 5,000/-.