PETITIONER:
BROOKE BOND INDIA LTD.

Vs.

RESPONDENT:
THE WORKMEN

DATE OF JUDGMENT22/07/1981

BENCH:
GUPTA, A.C.
BENCH:
GUPTA, A.C.
PATHAK, R.S.
REDDY, O. CHINNAPPA (J)

CITATION:
1981 AIR 1660 1982 SCR (1) 29
1981 SCC (3) 493 1981 SCALE (3)1041

ACT:
Industrial Disputes Act, 1947 Section 2(p), S. Settlement-Meaning of, S.18 (1), Settlement if binding on "parties to the agreement".
Industrial Disputes (Bombay) Rules, 1957, Rule 62 (2) (b), signing of memorandum of Settlement-Meaning of.

HEADNOTE:
Two Trade Unions of Workmen function at appellant's factory. The State Government made a reference under the Industrial Dispute Act, 1947 for adjudication of an Industrial Dispute between the appellant and its workmen regarding their demands.

A joint charter of Demands was later submitted by the Unions raising certain other demands. On behalf of one of the union a negotiation committee was formed composed of some of the office bearers of that union to participate in the negotiations for a settlement. Ultimately a memorandum of settlement was signed. The members of the negotiation committee of aforesaid union who happened to be office bearers of that union signed the settlement for their union. The settlement covered the disputes mentioned in the reference and also certain other disputes between the management and workmen. A joint petition for passing an award in terms of the settlement was filed before the tribunal.

A few days later the executive committee of the aforesaid Union rejected the agreement on the ground that the agreement had given rise to discontent among a section of the workers whose problems had not been satisfactorily solved. The question was whether the agreement was a settlement within the meaning of section 2(p) of the Industrial Disputes Act from which the Union could not resile.
30

The Tribunal by its award held that the agreement was not a settlement within the meaning of section 2(p) of the Act. Hence this appeal by special leave.

It was argued on behalf of the appellants that as the agreement was signed in the manner prescribed by rule 62(2)(b) of the Industrial Disputes (Bombay) Rules, 1957 and

as the requirements of rule 62(4) have been complied with, the agreement must be accepted as a settlement within the meaning of section 2(p) of the Industrial Disputes Act, and as such was binding on the Union under Section 18(1) of the Act.

Dismissing the appeal,

^

HELD: 1. In this case it has been found that the office bearers who signed the agreement were not competent to enter into a settlement with the company and as such it cannot be said that an agreement was reached between the employer and the workmen represented by the Union. [35 E-F]

2. What is binding as a settlement under section 18 (1) of the Industrial Disputes Act is an agreement between the employer and workmen and the Tribunal found that there was no agreement between the Management and the Union. [35 E-F]

Workmen of M/s Delhi Cloth & General Mills v. Management of M/s Delhi Cloth & General Mills [1970] 2 SCR 886 referred to.

3. The procedure prescribed by either rule 58 of the Central Rules or Rule 62 of the Bombay Rules pre-supposes the existence of a valid settlement. But neither rule 58 of the Central Rules nor rule 62 of the Bombay Rules contains anything to suggest that any officer of a trade union who is entitled to sign a settlement reached between the parties must be deemed to have had the authority to enter into the settlement. Rule 62 only prescribes the form of memorandum of settlement and by whom it should be signed and the question whether the procedure has been complied with will arise only if there is in existence a valid settlement. [36 F-H]

The Sirsilk Ltd. and others v. Govt. of Andhra Pradesh

JUDGMENT:

31

Hindustan Housing Factory Ltd. v. Hindustan Housing Factory Employees' Union & Others [1969] Lab. I.C. 1450 approved.

&

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1757 of 1980.

From the judgment and order dated 11th September, 1980 of the Industrial Tribunal at Nagpur in Reference (II) No. 22/78.

Y.S. Chitale, R.K. Thakur, O.C. Mathur and K.J. John for the Appellant

H.W. Dhabe and A.G. Ratanaparkhi for Respondent 1.

G.L. Sanghi, V.A. Bobde, A.K. Sanghi and Miss Vasudha Sanghi for Respondent 2.

The Judgment of the Court was delivered by

GUPTA J. During the pendency of a reference before the Industrial Tribunal at Nagpur, a written agreement in settlement of the disputes covered by the reference as also certain other disputes between the management and the workmen was signed; on behalf of the trade unions representing the workmen the agreement was signed by their office bearers. A few days later the executive committee of one of the Unions rejected the agreement on the ground that the agreement had given rise to discontent among a section of the workers whose problems had not been satisfactorily solved. A question then arose, whether the agreement was a settlement within the meaning of section 2 (p) of the Industrial Disputes Act, 1947 from which the Union could not

resile. The Tribunal by its award held that the agreement was not a settlement binding on the union: the validity of this award is challenged in this appeal by special leave preferred by the management.

The relevant facts are those. The appellant, Brooke Bond India Limited, a Company incorporated and registered under the Indian Companies Act, hereinafter referred to as the company, have a factory at Kanhan, District Nagpur, in Maharashtra. Two trade unions of workmen employed by the company function in the

32

Kanhan factory; one is known as Bharatiya Swatantra Brooke Bond Chaha Karamchari Sangh (Bharatiya Union for short) and the other is called M.P. Rashtriya Brooke Bond Chaha Karamchari Sangh (Rashtriya Union for brevity's sake). In this case we are concerned with the Rashtriya Union. On September 27, 1975 Government of Maharashtra made a reference under section 10 (1) (d) of the Industrial Disputes Act, 1947 for the adjudication of an industrial dispute between the company and the workmen in respect of 4 demands set out in the schedule to the order of reference. Subsequently on June 11, 1977 a joint charter of demands was submitted by the workmen through the aforesaid two unions; this charter included 26 demands. At a meeting of the executive committee of the Rashtriya Union held on August 19, 1977 several resolutions were passed of which two only appear to be relevant for the present purpose. By one of the resolutions a negotiation committee composed of six members including some of office bearers of the union was formed "for a discussion to be held with the management". The other resolution related to the 26 demands mentioned above and it said that "a proper decision" regarding these demands would be taken after "due consideration of the proposals given by the members and after placing the same before the negotiation committee of both the unions". Thereafter two more charters of demands, one by each union, were submitted. At a meeting of the executive committee of the Rashtriya Union held on January 8, 1978 the office bearers of the union put it on record that in respect of the 4 demands pending before the Tribunal the union would accept a satisfactory settlement and that the executive committee had granted permission to the negotiation committee for carrying on discussion with the company and the Bharatiya Union as regards the pending demands. Subsequently the resignation of some of the office bearers of the union led to the reconstitution of the negotiation committee at a meeting of the executive committee of the union held on February 18, 1978. On the subject of the proposed settlement it was disclosed at this meeting that the company had agreed to obtain clarification from the head office on several points including the absorption in company's employment of workers employed in loading and unloading job and confirmation of casual workers. The general secretary of the Rashtriya Union by a letter dated March 9, 1978 informed the factory manager that the members of the reconstituted negotiation committee "will participate in the negotiations to be commenced from 13th March, 1978 for arriving at an agreement". On March 16, 1978 a

33

memorandum of settlement was signed. The following office bearers of the Rashtriya Union signed the memorandum, the working president, two vice-presidents, general secretary, joint secretary and the organizing secretary. They were also members of the negotiation committee along with others. On the next day, March 17, a joint petition was filed before

the Industrial Tribunal signed by the factory manager of the company, the general Secretary of the Bharatiya Union and the General Secretary of the Rashtriya Union praying that an award in terms of the settlement be passed.

About a week later, on March 24, 1978 a meeting of the executive committee of the Rashtriya Union was held in which "it was unanimously resolved to withdraw from the agreement dated March 16, 1978" in view of the "discontent amongst the workers about the agreement". On April 1, 1978 at an emergent meeting of the executive committee of the Rashtriya Union, after an elaborate discussion on the agreement it was "resolved to reject the agreement as the problems of the workers were not satisfactorily solved". On April 7, 1978 an application was made to the Tribunal on behalf of the Rashtriya Union praying that the agreement be rejected.

The Tribunal heard the question as to the validity of the settlement so far as the Rashtriya Union was concerned as a preliminary issue. The Tribunal rejected the contention raised on behalf of the Rashtriya Union that the agreement signed on March 16, 1978 was only a draft agreement and held that it was intended to be a settlement. The Tribunal however came to the conclusion that it could not be treated as a settlement within the meaning of section 2 (p) of the Industrial Disputes Act.

It cannot be disputed that unless the office bearers who signed the agreement were authorised by the executive committee of the Union to enter into a settlement or the constitution of the Union contained a provision that one or more of its members would be competent to settle a dispute with the management, no agreement between any office bearer of the Union and the management can be called a settlement as defined in section 2 (p) There is no provision in the constitution of the Rashtriya Union authorising any office bearers of the Union to enter into a settlement with the management. We have referred above to the proceedings of the executive committee. As the Tribunal points out, the resolutions passed by the

34

executive committee do not support the claim that the Negotiation Committee was empowered to enter into a settlement without seeking ratification from the executive committee. The Tribunal held, in our opinion rightly, that the fact that the agreement was signed by the office bearers of the Union does not clinch the matter because the executive committee at no stage had accepted the agreement. In fact no meeting of the executive committee was held before the agreement was signed on March 16, 1978 to consider whether the agreement was acceptable.

Section 2 (p) of the Industrial Disputes Act defines "settlement";-

> "Settlement" means a 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 an officer authorised in this behalf by the appropriate Government and the conciliation officer;"

In the present case the purported settlement was arrived at not in the course of conciliation proceedings. Section 18 (1) of the Act provides:

> "Section 18 . Persons on whom settlements and awards are binding:

(1) A settlement arrived at by agreement between the employer and workmen otherwise than in cause of conciliation proceeding shall be binding on the parties to the agreement :"

It is also necessary to refer to rule 62 (2) (b) of the Industrial Disputes (Bombay) Rules, 1957. Rule 62 (2) (b) is as follows:

"62. Memorandum of Settlement:-

... ...

35

(2) The settlement shall be signed by:

(a) ... ...

(b) in the case of workmen, either by the President or Secretary (or such other officer of a trade union of the workmen as may be authorised by the Executive Committee of the Union in this behalf), or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose."

Sub-rule (4) of rule 62 requires the parties to the settlement to send copies thereof jointly to the prescribed authorities. That this was done in the present case is not disputed. It was argued on behalf of the appellant that as the agreement was signed in the manner prescribed by rule 62 (2) (b) and as the requirements of rule 62 (4) have been complied with, the agreement must be accepted as a settlement within the meaning of section 2 (p) of the Industrial Disputes Act and as such binding on the Rashtriya Union under section 18 (1) of the Act. But, as pointed out by the Tribunal rule 62 only prescribes the form of the memorandum of settlement and by whom it should be signed, and the question whether the procedure prescribed by rule 62 has been complied with will arise only if there is in existence a valid settlement between the parties concerned. In this case it has been found that the office bearers who signed the agreement were not competent to enter into a settlement with the company and as such it cannot be said that an agreement was reached between the employer and the workmen represented by the Rashtriya Union. What is binding as a settlement under section 18 (1) of the Industrial Disputes Act is an agreement between the employer and workmen. Here the Tribunal found that there was no agreement between management and the Rashtriya Union. Reliance was placed on behalf of the appellant on the decision of this Court in Workmen of M/s. Delhi Cloth and General Mills v. Management of M/s. Delhi Cloth and General Mills.(1) In that case among other matters rule 58 of the Industrial Disputes (Central) Rules, 1957 made under section 38 of the Industrial Disputes Act, 1947 came up for consideration. Rule 58 (2) (b) of the Central Rules which is similar to rule 62 (2) (b) of the Bombay Rules reads:

36

"85. Memorandum of settlement:

(1) x x x

(2) the settlement shall be signed

(a) x x x

(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."

It was held that the rule must be fully complied with if the settlement is to have a binding effect on all workmen. Section 18 (3) of the Industrial Disputes Act makes a settlement which has become enforceable, binding among

others, on all parties to the industrial dispute. It is not clear why this decision was considered relevant. Possibly this case was referred to for the observation occurring on page 897 of the report: "We may observe here that we were not impressed by the appellant's argument that r. 58 rub-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". Reference to this observation may have been intended as a reply to the construction sought to be put on rule 62 (2) (b) of the Bombay Rules on behalf of the Rashtriya Union that the words "duly authorised" applied not only to the five representatives of workmen" but also to the office bearers mentioned in the rule to enable them to sign the settlement; on such construction it was contended that the office bearers of the Union who signed the agreement were not specifically authorised to do so. This construction of rule 62 (2) (b) was rightly rejected by the Tribunal. But neither rule 58 of the Central Rules nor rule 62 of the Bombay Rules contains anything to suggest that any officer of a trade union who is entitled to sign a settlement must be deemed to have had the authority to enter into this settlement. The procedure prescribed by either rule 58 of the Central Rules or rule 62 of the Bombay Rules presupposes the existence of a valid settlement, and the question in this case is whether there was such a settlement. Another case relied on by the appellant is The Sirsilk Ltd. and others v. Government of Andhra Pradesh and another.(1) The facts of that case
37
are that after the proceedings before the Tribunal had come to an end and the Tribunal had sent its award to government the parties concerned in the dispute came to a settlement. Section 17 (1) of the Industrial Disputes Act lays down that every award shall within a period of thirty days from the date of its receipt by the appropriate government be published in such manner as the appropriate government thinks fit. Section 18 (1) makes a settlement arrived at between the employer and workmen otherwise than in the course of conciliation proceedings binding on the parties to the agreement. Under section 18 (3) an award of a Tribunal on publication shall be binding on all parties to the industrial dispute. In Sirsilk case difficulty was felt in giving effect to the settlement because the proceedings before the tribunal had ended and the tribunal had sent its award to the government before the settlement was arrived at. This Court held:

> "The only way in our view to resolve the possible conflict which would arise between a settlement which is binding under s. 18 (1) and an award which may become binding under s. 18 (3) on publication is to withhold the publication of the award once the Government has been informed jointly by the parties that a settlement binding under s. 18 (1) has been arrived at.. In such a situation we are of opinion that the government ought not to publish the award under s. 17 (1) and in cases where government is going to publish it, it can be directed not to publish the award in view of the binding settlement arrived at between the parties under s. 18 (1) with respect to the very matters which were the subject matter of adjudication under the award."

We think this decision was relied on only to emphasize that a settlement reached between the parties concerned in the

dispute must prevail if it is reached at any time before the publication of the award. That is undoubtedly so, but the question before us is different-which is, whether in fact a settlement within the meaning of section 2 (p) of the Industrial Disputes Act was reached. Other questions will arise only after it is found that there was such a settlement in existence. Sirsilk does not therefore afford any assistance to the appellant. The tribunal in support of the view taken by it relied on a decision of the Delhi High Court. In

38

Hindustan Housing Factory Ltd. v. Hindustan Housing Factory Employees' Union and others, the High Court held:

> ".. the contention on behalf of the petitioner-company that the fact that the Memorandum of settlement was in the prescribed form and was signed by one or more of the office-bearers of the Union is by itself sufficient to make the settlement arrived at between the Management of the petitioner-company and the signatories binding on the Union and all its members, is untenable...
>
> The language of s. 18 (1) clearly shows that the settlement will be binding only "on the parties to the agreement." The definition of "settlement" in s. 2 (p) of the Act also states that "settlement" means a settlement arrived at "between the employer and the workmen." So, normally in order that a settlement between the employer and the workmen may be binding on them, it has to be arrived at by agreement between the employer and the workmen. Where the workmen are represented by a recognised Union, the settlement may be arrived at between the employer and the Union. If there is a recognised Union of the workmen and the Constitution of the Union provides that any of its office-bearers can enter into a settlement with the Management on behalf of the Union and its members, a settlement may be arrived at between the employer and such office-bearer or bearers. But, where the Constitution does not so provide specifically, the officer-bearer or bearers who wish to enter into a settlement with the employer should have the necessary authorisation by the executive committee of the Union or by the workmen. A reading of rule 58 clearly shows that it presupposes the existence of a settlement already arrived at between the employer and the workmen, and it only prescribes the from in which the Memorandum of settlement should be, and by whom it should be signed. It does not deal with the entering into or arriving at a settlement. Therefore,

39

> where a settlement is alleged to have been arrived at between an employer and one or more office-bearers of the Union, and the authority of the office-bearers who signed the Memorandum of settlement to enter into the settlement is challenged or disputed, the said authority or authorisation of the office-bearers who signed the Memorandum of settlement has to be established as a fact, and it is not enough if the employer merely points out and relies upon the fact that the Memorandum of settlement was signed by one or more of the office-bearers of the Union."

In our opinion the above extract from the judgment of the Delhi High Court states correctly the law on the point. The appeal is accordingly dismissed; in the circumstances of the case we direct the parties to bear their own costs.

N.K.A. Appeal dismissed.

40

JUDIS