SUPREME COURT OF INDIA

Siemens Ltd.& Anr.

Vs.

Siemens Employees Union & Anr.

C.A.No.8607 of 2011

(D.K.Jain and Asok Kumar Ganguly,JJ.,)

12.10.2011

JUDGMENT

Asok Kumar Ganguly,J.,

SLP(Civil)No.17414 of 2010

1. Leave granted.

2. This appeal has been preferred from the order dated 12th March, 2010 of the Division Bench of the Bombay High Court in Letters Patent Appeal No. 30/2010.

3. The appellant no. 1 is a public limited company having its registered office at 130, Pandurang Budhkar Marg, Dr. Annie Besant Road, Worli, Mumbai and is engaged in the business of manufacturing switchgears, switchboards, motors, etc., of its many factories, one is located at Thane-Belapur Road, Kalwe, Thane, and houses the plant that manufactures switchboards for the company. The appellant employs about 2200 employees. The appellant no. 2 is the Chief Manager (Personnel) of the said Company.

4. Respondent no. 1, the contesting respondent, is a registered trade union of the workers employed by the appellant no.1. It is recognized under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter, referred to as the Maharashtra Act). Respondent no. 2, the pro forma respondent, represents the Switchboard Unit of the company, and is responsible for the routine functioning of the plant at Kalwe.

5. In 2007 the trade union preferred a complaint under Section 28 of the Maharashtra Act for unfair labour practices, jointly and severally against the company, its Chief Manager for personnel (appellant no. 2) and its Works Manager (respondent no.2) before the learned Industrial Court, Thane, Maharashtra. The trade union impugned a notification dated 3rd May, 2007 issued by the company for its workmen employed in its factory located in Kalwe, whereby applications were invited to appear for a selection process to undergo a two year

long period as an `Officer Trainee'. This training was to be in the fields of manufacturing, quality inspection and testing, logistics and technical sales order execution. The notification stated that after the successful completion of the said two years, the trainees were to be designated as `Junior Executive Officers'. The case of the respondent trade union is that though the designation of `Junior Executive Officer' was that of an officer belonging to the management cadre, in fact it was merely a nomenclature, with negligible content of managerial work. It was urged that the job description of a Junior Executive Officer was same as that of a workman, with little additional duties. Resultantly, the Junior Executive Officers of the factory were now to do the very same work that had always been done by the workmen.

6. It was submitted that such a move was, in effect an alteration in the conditions of service of the workmen, as some vacancies available for workmen in the switch board unit were to be reserved for officers from the management cadre. Resultantly there would have been a reduction in the job opportunities for workers. According to the trade union, any such change could not have been affected without giving the workmen a prior notice to such effect in terms of Section 9A of the Industrial Disputes Act, 1947. In this regard, the trade union referred to an agreement entered into between itself and the company in 1982. The said agreement, titled `Rationalization and Transport Settlement' has clause (7). The said clause is as follows:-

> "7. That employees or officer or staff categories shall not be asked to do normal production work."

7. The union also referred to clause (12) of the agreement which is as follows:-

> "12. That this settlement shall not be utilized for eliminating the further employment potential or promotional opportunities to the existing workmen."

8. Clause (16) is set out herein below:

> "16. This agreement shall come into force with effect from 01.01.1981 except Clause No.14 which shall have effect from 16.11.1982 only and shall remain in operation until it is changed in accordance with the provisions of law."

9. Clause (7) ensures that the job opportunities for workers shall not be reduced by the company by making its managerial staff perform the workmen's job. Clause (16) ensured the perpetuity of this Settlement until expressly overruled by a subsequent Settlement. It was submitted by the trade union that the change sought to be brought about by the company by its notification dated 3rd May, 2007, was in violation of clause (7). The trade union thus complained that the company and its two officers resorted to unfair labour practices mentioned in items 9 and 10 of Schedule IV of the Maharashtra Act, and had thereby violated the mandate of Section 27 of the Maharashtra Act.

10. It was further submitted that even if the said Settlement was said to be non-binding, the impugned move was in violation of Section 9A of the Industrial Disputes Act insofar as the affected workmen had not been given any notice as contemplated by clause (a) of Section 9A read with Entry 11 of the Fourth Schedule of the Industrial Disputes Act.

11. The Maharashtra Act was the first enactment of its kind in the country to have been legislated by a State for the prevention of unfair labour practices and consequent victimization. It was a comprehensive legislative device to weed out unfair labour practices, not only on the part of the employers, but also on the part of trade unions and the workmen. Chapter VI of the Act is titled `Unfair Labour Practices'. Section 26, the first section of this chapter, defines an unfair labour practice for the purposes of the Act. It reads as under:

> "26. Unfair labour practices: In this Act, unless the context requires otherwise, `unfair labour practices' mean any of the practices listed in Schedules II, III and IV."

12. Section 27 prohibits `unfair trade practices'.

The said Section is as follows:-

> "27. Prohibition on engaging in unfair labour practices: No employer or union and no employees shall engage in any unfair labour practice."

13. Section 28 deals with the procedure for preferring a complaint against an unfair labour practice.

> Clause (1) of this section reads as follows:
>
> "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 Act:
>
> 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."

14. In the instant case the complaint has been filed under Section 28 read with Section 30(2) of the Maharashtra Act by the respondent-union and in the instant complaint the respondent-union alleged that the management is indulging in unfair labour practices under item Nos.9 and 10 of Schedule IV of the Maharashtra Act (para 3(a) of the complaint). Schedule IV of the Maharashtra Act categorizes the general unfair labour practices on the part of the

employers. Under Schedule IV, item Nos.9 and 10, in respect of which unfair labour practices have been alleged, provide as follows:

> "9. Failure to implement award, settlement or agreement.
> 10. To indulge in act of force or violence."

15. In paragraph 3 (b) of the complaint it has been alleged that the respondent-union is anticipating that the management is likely to reduce the work of the workmen category and give it to the newly recruited officer trainees. It has also been alleged that by doing so the management is acting in violation of Section 9(A) of Industrial Disputes Act, 1947 by bringing about a change in service condition without giving any notice. In so far as this allegation in the complaint is concerned, the order of Industrial Court, Thane, shows that it did not find that the management was in any way trying to change the condition of the service or it was acting in violation of the provisions of Section 9(A).

16. The precise findings of the Labour Court, Thane while dealing with the complaint of the Union about change of condition of service under Section 9(A) of the Industrial Disputes Act are as under:

> ".....Considering the evidence that even earlier also, the company has reduced the strength of the employees in various departments, they were transferred from one section to other section, the promotions are given from the category of workmen to the category of officers and therefore, it cannot be said that there's any breach under S.9A of the Industrial Dispute Act, 1947."

17. Therefore, the complaint of the respondent-union, which ultimately found favour with Industrial Court as unfair labour practice, is the attempt made by the management in not implementing clause 7 of settlement.

18. In this aspect the exact finding of the Labour Court is as follow:

> ".....Considering the nature of work to be performed by these Officer's Trainee, certainly it shows that there's breach of clause 7 of the Settlement dated 16.11.1982. As such, the Complainant Union has succeeded to prove the unfair labour practice under Item 9 of Schedule IV of the Act."

19. Before proceeding further in this matter, this Court proposes to examine the concept of unfair labour practice and the way it has been dealt with under the Maharashtra Act and also under the ID Act. Any unfair labour practice within its very concept must have some elements of arbitrariness and unreasonableness and if unfair labour practice is established the same would bring about a violation of guarantee under Article 14 of the Constitution.

Therefore, it is axiomatic that anyone who alleges unfair labour practice must plead it specifically and such allegations must be established properly before any forum can pronounce on the same. It is also to be kept in mind that in the changed economic scenario, the concept of unfair labour practice is also required to be understood in the changed context. Today every State, which has to don the mantle of a welfare state, must keep in mind that twin objectives of industrial peace and economic justice and the courts and statutory bodies while deciding what unfair labour practice is must also be cognizant of the aforesaid twin objects.

20. Unfair labour practice, for the first time, was defined and codified in the Maharashtra Act referred to hereinabove. But in so far as the Industrial Disputes Act, Central Law, is concerned, unfair labour practice was codified and brought into force by the Amending Act, 46 of 1982 with effect from 21st August 1984.

21. Clause (ra) of Section 2 of Industrial Disputes Act defines unfair labour practice to mean the practices specified in the fifth schedule and the fifth schedule was also inserted by the said Amending Act. The fifth schedule has two parts. The first part refers to unfair labour practices on the part of the employers and trade union of employers and the second part refers to unfair labour practices on the part of the workmen and trade union of workmen. However, there is some difference between the provisions relating to unfair labour practices in the Maharashtra Act and those in Central Act i.e. Industrial Disputes Act. The Industrial Disputes Act prohibits an employer or workmen or a trade union from committing any unfair labour practice while the Maharashtra Act prohibits an employer or union or an employee from engaging in any unfair labour practice. The prohibition under the Industrial Disputes Act is aimed at preventing the commission of an unfair labour practice while the Maharashtra Act mandates that the concerned parties cannot be engaged in any unfair labour practice. The word `engage' is more comprehensive in nature as compared to the word `commit' [See *Hindustan Lever Ltd. v. Ashok Vishnu Kate & others reported in*[1] at para 37, page 345 of the report].

22. In the instant case no allegation of victimization has been made by the respondent-union in its complaint. In the absence of any allegation of victimization it is rather difficult to find out a case of unfair labour practice against the management in the context of the allegations in the complaint. It is nobody's case that the management is punishing any workmen in any manner. It may be also mentioned here that no workmen of the appellant-company has made any complaint either to the management or to the union that the management is indulging in any act of unfair labour practice.

23. Even then the Labour Court, Thane, has come to certain findings of unfair labour practice against the management and which have been referred to above.

24. The appellant-company challenged the finding of the Labour Court before the High Court by filing a writ petition. The learned Single Judge in his judgment noted that the main grievance of the respondent-union was that in the process of reorganizing its work pattern the management of the appellant-company was reducing the number of posts of workmen and

some of the work which were done by the workmen are to be done by the officers and the grievance of the respondent-union was that this was contrary to clause 7 of settlement dated 16th November, 1982 (hereinafter `the said settlement'). Ultimately, the learned Single Judge came to a finding that though the post which is introduced by the management is named Junior Executive, the said post was different from the post of Junior Executive which was in existence and after saying so the learned Single Judge held, "the Tribunal has rightly held that this amounted to unfair labour practice under item 9 of Schedule IV of the said Act" (para 9). The learned Single Judge also noted that even though promoted as Junior Executive the present workers will be expected to do a part of the work of the workman along with some additional work. This, according to the learned Single Judge, was in breach of clause 7 of the said settlement.

25. The appellant-company also challenged the said order of the learned Single Judge before the Division Bench. The Division Bench came to a finding that whatever work is given to the officers/trainees in addition to the present work was the work of a workman. So even if the workmen are promoted they will be doing the job of a workman with some additional work and the Division Bench also came to the same finding that this will be in violation of clause 7 of the agreement and thus considered it unfair labour practice. With these findings, the Division Bench affirmed the finding of the learned Single Judge.

26. Mr. K.K. Venugopal, learned Senior Counsel appearing on behalf of the respondent-union urged that in exercise of its powers under Article 136 this Court normally does not interfere with concurrent finding and, therefore, should not interfere with the concurrent finding in the instant case.

27. It is true that this Court normally does not upset a concurrent finding but there is no such inflexible rule. The jurisdiction of this Court under Article 136 is a special jurisdiction. This is clear from the text of the Article itself which starts with a non-obstante clause. This is a jurisdiction conferring residual power on this Court to do justice and is to be exercised solely on discretion to be used by this Court to advance the cause of justice. This Article does not confer any right of appeal on any litigant. But it simply clothes this Court with discretion which is to be exercised in an appropriate case for ends of justice. Therefore, there can be no hard and fast rule in the exercise of this jurisdiction. Just because the findings which are assailed in a special leave petition are concurrent cannot debar this Court from exercising its jurisdiction if the demands of justice require its interference. In a case where the Court finds that the concurrent finding is based on patently erroneous appreciation of basic issues involved in an adjudication, the Court may interfere. In the instant case the Court proposes to interfere with the concurrent finding for the reasons discussed herein below.

28. Admittedly, the finding of unfair labour practice against the appellant-company by the High Court and the Labour Court is based on the premise that the appellant-company acted in breach of clause 7 of the agreement. It is well known that an industrial settlement is entered into between the management and labour for maintaining industrial peace and harmony. Therefore, any attempt by either the management or the workmen to violate such a settlement may lead to industrial unrest and amounts to an unfair labour practice. Here the

charge of unfair labour practice against the appellant-company is that it has violated item 9 of Schedule IV of the Maharashtra Act. Item 9 has been set out hereinabove and the purport of item 9 is that any failure to implement an award or settlement or agreement would be an unfair labour practice. In the instant case while considering clause 7 of the said settlement the Courts have not taken into consideration clause 12. Both clauses 7 and 12 have been set out hereinabove. If a harmonious reading is made of clauses 7 and 12 it will be clear that clause 7 cannot be given an interpretation which makes clause 12 totally redundant. Clause 7 contains a prohibition against the employees or officers or members of the staff of the appellant- company from doing normal production work. But that cannot be read in such a manner as to nullify the purport of clause 12 which reserves the promotional employment potential of existing workmen. So in the instant case if by way of rearrangement of work, the management of the appellant-company gives promotional opportunity to the existing worker that does not bring about any violation of clause 7 of the said settlement rather such a rearrangement of work will be in terms of clause 12. At the same time if some of job of executive officers are the same as is done by the existing worker that does not bring about such a violation of clause 7 as to constitute unfair labour practice.

29. What is restricted under clause 7 is asking the officers to do the normal production work. There is no blanket ban in asking the officers from doing any production work. Therefore, both clause 7 and clause 12 of the said settlement must be reasonably and harmoniously construed to make it workable with the evolving work culture of the appellant-company in facing the new challenge in the emerging economic order which has changed considerably from 1982. Even if we assume that 1982 agreement still subsists even then when a challenge is made of unfair labour practice on the basis of violation of a clause of 1982 agreement on the basis of a complaint filed in 2007, the Labour Court and the High Court must consider the said agreement reasonably and harmoniously keeping in mind the vast changes in economic and industrial scenario and the new challenges which the appellant-company has to face in the matter of reorganizing work in order to keep pace with the changed work culture in the context of scientific and technological development. This Court also finds that while adjudicating on the complaint of the union both the Labour Court and the High Court should have taken into consideration all subsequent settlements between the management of the said company and the union in 1985, 1988, 1992, 1997 and 2004. Both the Labour Court and the High Court failed to notice that in its complaint the union has accepted that they are not objecting to the promotion being granted to the workers. However, the said stand of the workers union is not consistent with the nature of the complaint filed before the Labour Court.

30. The admitted facts are, there are 89 vacancies in the category of officers and 154 workers have applied. Therefore, everybody who has applied cannot be promoted, only a certain percentage of the workers applying can be promoted. Both the Labour Court and the High court failed to take into consideration that the workers voluntarily applied for the promotion scheme pursuant to its introduction. Nowhere has it been alleged by the workers that any force or pressure was brought upon them to apply. In the background of these facts the question is when the workers applied on their own to a scheme of promotion introduced by the management and they do not make any complaint either to the union or to the

management in respect of the introduction of the scheme, can it be said that by introducing a promotional scheme the management is indulging in unfair labour practice? The union is supposed to represent the interests of the workers. When the workers themselves do not consider the scheme as unfair to them, can the union take upon them the burden of saying that the scheme is unfair? In the instant case the respondent-union is unfortunately seeking to do that. Both the Labour Court and the High Court have failed to appreciate this basic fundamental issue in their adjudication and have, therefore, come to an obviously erroneous finding. Apart from the aforesaid clear factual position legally also the management of the company is not prevented from rearranging its business in the manner it considers it best, if in the process it does not indulge in victimisation.

31. Reference in this connection may be made to a decision of this Court in *Parry & Co. Ltd. v. P.C. Pal & ors., reported in*[2] a three-Judge Bench of this Court held as follows:-

> "It is well established that it is within the managerial discretion of an employer to organize and arrange his business in the manner he considers best. So long as that is done bona fide it is not competent of a tribunal to question its propriety. If a scheme for such reorganization results in surplusage of employees no employer is expected to carry the burden of such economic dead weight and retrenchment has to be accepted as inevitable, however unfortunate it is..."
>
> (para 14, page 1341 of the report)

32. In the instant case no malafide has been alleged against the appellant-company. Nor it is anybody's case that as a result of reorganization of its working pattern by introducing the scheme of promotion any person is either retrenched or is rendered surplus.

33. In the given situation, this Court cannot appreciate how by introducing the scheme of promotion to which the workers overwhelmingly responded on their own can it be said that the management has indulged in unfair labour practice.

34. Similarly, in the case of *Hindustan Lever Ltd. v. Ram Mohan Ray and others reported in*[3] another three-Judge Bench of this Court held that nationalization and standardization of work by the management by itself would not fall under item 10 of Schedule IV of Industrial Disputes Act unless it is likely to lead to retrenchment of workers. Relying on the decision in Parry (supra) this Court held in Hindustan Liver (supra) that since the reorganization has not brought about any change adversely affecting the workers and there has been no retrenchment, similar principles are applicable here.

35. Mr. K.K. Venugopal, learned Senior Counsel appearing for the union in support of his submission relied on a decision of this Court in the case of *Arkal Govind Raj Rao v. Ciba Geigy of India Ltd., Bombay reported in*[4] In that case the question which was considered by this Court was where an employee was performing multifarious duties and the issue is whether he is a workman or not the test to be applied is what was the primary, basic or dominant nature of the duties for which the workman was employed. This Court came to the

conclusion that when the primary and basic duties of an employee are clerical but certain stray assignments are given to him to create confusion, the Court may remove the gloss to find out the reality.

36. In Arkal Govind Raj (supra) the aforesaid question arose out of the termination of service of the appellant Govind Raj as his termination led to an industrial dispute. In that dispute numerous primary objections were raised by Ciba Geigy and one of them was that Govind Raj was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act. In that context, this Court, after analyzing the evidence, came to a finding that Govind Raj was a workman within the meaning of the Act and held that neither the Labour Court nor the High Court came to a correct finding. With that finding this Court remanded the matter to the Labour Court for deciding the dispute in accordance with its judgment. The said decision has no bearing on the issues with which we are concerned in this case. It is well known that the ratio of a decision has to be appreciated in its context. Going by that principle, we do not find that the decision in Arkal Govind Raj (supra) is of any assistance to the respondents.

37. Mr. Venugopal also relied on the commentary of K.D. Srivastava on Law Relating to Trade Unions and Unfair Labour Practices in India (Fourth Edition). The learned counsel relied on a decision of the Allahabad High Court in the case of *L.H. Sugar Factories and Oil Mills (P) Ltd., v. State of U.P.*[5], Some of the observations made in the said judgment which have been quoted in the commentary of K.D. Srivastava are as follows:-

> "...If an employer deliberately uses his power of promoting employees in a manner calculated to sow discord among his workmen, or to undermine the strength of their union, he is guilty of unfair labour practice."

38. In the instant case no malafide has been alleged by the union against the appellant-company in the matter of reorganization of its work. It is also nobody's case that as a result of the reorganization of the work any attempt is made by the appellant- company to create discord amongst the workmen so as to undermine the strength of the union. Apart from that the facts in the case of L.H. Sugar Factories (supra) are totally different. In L.H. Sugar Factories (supra) the company wrongfully deprived ten workers of their promotion to the post of driver-cum-assistant fitter while preferring eleven other workmen over them. This led to an industrial dispute. Therefore, those observations of Allahabad High Court in a totally different fact situation are not attracted in the present case to make out a case of unfair labour practice. We fail to appreciate the relevance of the aforesaid decision to the facts of the present case.

39. At the same time it is not the case of the respondent-union that its recognition is in any way being withdrawn or tinkered with. Nor is it the case of the respondent-union that it is losing its power of collective bargaining. It may be that the number of workmen is reduced to some extent pursuant to a promotional scheme to which the workmen readily responded. But no union can insist that all the workmen must remain workmen perpetually otherwise it would be an unfair labour practice. Workmen have a right to get promotion and improve their lot if the management offers them with a bona fide chance to do so. In fact if the order

of the High Court is upheld, the same will go against the interest of erstwhile workmen of the appellant-company who have responded to the scheme of promotion.

40. For the reasons aforesaid, we are of the view that the High court failed to have a correct perspective of the questions involved in this case and obviously came to an erroneous finding.

41. We allow the appeal and set aside the order of the High Court in which has merged the order of the Labour Court. However, we make it clear that in implementing the scheme the management of the appellant-company must not bring about any retrenchment of the workmen nor should the workmen be rendered surplus in any way.

42. The appeal is, thus, allowed. There will be no order as to cost.

Judgment Referred.

[1]*(1995) 6 SCC 0326*
[2]*AIR 1970 SC 1334*
[3]*(1973) 4 SCC 0141*
[4]*(1985) 4 SCC 0371*
[5]*(1961) 1 LLJ 686 (HC All*)