CASE NO.:
Appeal (civil) 4377 of 2005

PETITIONER:
Jainhind Roadways

RESPONDENT:
Maharashtra Rajya Mathadi Transport and General Kamgar Union and Ors.

DATE OF JUDGMENT: 30/09/2005

BENCH:
Arijit Pasayat & C.K. Thakker

JUDGMENT:
JUDGMENT

ARIJIT PASAYAT, J.

All these appeals have a common matrix in a judgment rendered by a Division Bench of the Bombay High Court dismissing the appeals filed by the present appellants which were filed against judgments of learned Single Judge.

Factual background needs to be noted in brief:

Around 1980 the All-India Transport Employees Association (in short 'association') raised dispute relating to certain general demands including pay-scales, dearness allowance etc. In relation to employees employed with various transporters having establishment all over India. The dispute was referred by the appropriate Government on 12th August, 1981 under Section 10(1)(d) of the Industrial Disputes Act, 1947 (in short 'the Act') for adjudication. Initially the reference was in respect of 259 employers. Subsequently, by a corrigendum issued on 25.2.1982 116 more employers were included in the reference. A common award was made by the Industrial Tribunal on 12th November, 1986. Award was challenged by some of transporters and the union representing some of the workmen by filing writ petitions. By common judgment dated 11th November, 1992 the writ petitions were disposed of by the High Court remanding the reference to the Industrial Tribunal. The High Court found that the Tribunal instead of fixing fair wages had fixed minimum wages as the wages payable to the concerned workmen. When the matter was taken by the Tribunal afresh, all the 28 transporters and the workmen appeared before the Industrial Tribunal. Two unions which are respondent nos. 1 and 2 herein appeared before the Tribunal taking the stand that they were representing the workmen. While the matter was pending before the Industrial Tribunal it was brought to the notice of the Tribunal that the concerned workmen had entered into settlements with the employer-transporters and request was made to dispose of the reference accordingly. This plea was resisted by the respondent nos. 1 and 2-unions. The Tribunal did not accept the settlement by holding as follows;

> "The settlement if arrived with coercive under influence, by fraud or by corrupt practices and adopting malafide and by inducement then it should be examined..... In these settlement the basic wages are fixed at the rate of minimum wages as notified in 20th July 1994 giving increments. In these settlements there is no dearness allowance agreed between the workers and employer respectively. Even the demand of transfer subject to consultation with union has not been agreed. In other words during the pendency and at the final stage of the proceeding these settlements have arrived and given goodbye to all the demands...If these settlements are accepted then in other words the minimum wages are allowed to be paid. As the lordship in W.P. has observed that the Tribunal has to fix fair wages, and not the minimum wages. The Government

machinery has to fix the minimum wages and not the Tribunals or court of law, to fix the minimum wages.''

The Tribunal fixed the wages which according to it were the fair wages. The award was assailed by filing writ petitions in the High Court under Article 226 of the Constitution of India, 1950 (in short 'the Constitution').

Before the learned Single Judge in certain cases the affidavits of the workers concerned were filed stating that the dispute with the employer was settled and they were agreeable to the wages settled under the settlement. The learned Single Judge, however, was of the view that the Tribunal's judgment did not warrant interference as the Tribunal was bound to answer the reference in terms of the order of the High Court. Appeals were preferred before the Division Bench. By the impugned common judgment they were dismissed.

In support of the appeals, learned counsel for the appellants submitted that the approach of the Tribunal and the High Court is clearly erroneous. The concerned workmen never questioned fairness or terms of the settlement. The respondent nos. 1 and 2-union who had no locus standi to raise any dispute made some suggestions in that regard. As a matter of fact, there was no material placed before the Tribunal to show that the settlements were tainted. It is a settled position in law that where question is raised about the fairness of a settlement a separate industrial dispute is contemplated. In the absence of any material or reference the Tribunal was not justified in holding that the settlements were not legal. The vulnerability of the Tribunal's award and the judgments of the learned Single Judge and the Division Bench is apparent from the fact that in respect of one transporter-employer the settlement providing for identical scales of a wages was accepted. No reason has been indicated by the Tribunal as to why a departure was made in the case of the appellants. With regard to the locus standi of respondent nos. 1 and 2 it is pointed out that in the writ petitions before the High Court a clear plea was taken that they had no locus standi to represent the workmen. Specific reference was made to the following averments:

"10. The petitioners state that none of their employees are members of either the Respondent No. 1 or the Respondent No. 2 nor were Respondents No. 1 and 2 in existence in 1981.

11. The Petitioners state that the All India Transport Employees Association has ceased to exist and in the aforesaid reference, the Respondent No. 1 and 2 Union caused their appearance claiming to represent the employees of all the Transport Operators."

It is pointed out in the counter-affidavit filed before the High Court the stand of the present respondent nos. 1 and 2 can be culled out from the following statement:

"With reference to paragraph 1 to 11, I say that no comments are called out."

In response, learned counsel for the respondent nos. 1 and 2 submitted that under industrial law the role of the union is clearly recognized. They symbolize collective bargaining for the welfare of its members. It is submitted that well recognized principle in law is that if a settlements is factually found to have been arrived at with coercion, undue influence or fraud or by corrupt practice or adopting malafides or by inducement then the Tribunal can by examining the factual position ignore the settlements. It is further submitted that the factual position clearly shows that the possibility of an adverse decision may have operated as a positive force for the so-called settlement.

The effect of settlement has been considered by this Court in several cases. In The Sirsilk Ltd. and Ors. v. Government of Andhra Pradesh and

Anr., [1964] 2 SCR 448 it was observed at page 453 as follows:

"The contention on behalf of the appellant in the alternative is this. It is said that the main purpose of the Act is to maintain peace between the parties in an industrial concern. Where therefore parties to an industrial dispute have reached a settlement which is binding under s. 18(1), the dispute between them really comes to an end. In such a case it is urged that the settlement arrived at between the parties should be respected and industrial peace should not be allowed to be disturbed by the publication of the award which might be different from the settlement. There is no doubt that a settlement of the dispute between the parties themselves is to be preferred, where it can be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award, as it is arrived at by the free will of the parties and is a pointer to there being goodwill between them. Even though this may be so, we have still to reconcile the mandatory character of the provision contained in s. 17(1) for the publication of the award to the equally mandatory character of the binding nature of the settlement arrived at between the parties as provided in s. 18(1). Ordinarily there should be no difficulty about the matter, for if a settlement has been arrived at between the parties while the dispute is pending before the tribunal, the parties would file the settlement before the tribunal and the tribunal would make the award in accordance with the settlement."

Similarly in The State of Bihar v. D.N. Ganguly and Ors., [1959] SCR 1191 it was observed as follows:

"It is, however, urged that if a dispute referred to the industrial tribunal under section 10(1) is settled between the parties, the only remedy for giving effect to such a compromise would be to cancel the reference and to take the proceedings out of the jurisdiction of the industrial tribunal. This argument is based on the assumption that the industrial tribunal would have to ignore the settlement by the parties of their dispute pending before it and would have to make an award on the merits inspite of the said settlement. We are not satisfied that this argument is well-founded. It is true that the Act does not contain any provisions specifically authorising the industrial tribunal to record a compromise and pass an award in its terms corresponding to the provisions of order XXIIII, r. 3, of the Code of civil procedure. But it would be very unreasonable to assume that the industrial tribunal would insist upon dealing with the dispute on the merits even after it is informed that the dispute has been amicably settled between the parties. We have already indicated that amicable settlements of industrial disputes which generally lead to industrial peace and harmony are the primary objects of this Act. Settlements reached before the conciliation officers or boards are specifically dealt with by sections 12(2) and 13(3) and the same are made binding under section 18. There can, therefore, be no doubt that if an industrial dispute before a tribunal is amicably settled, the tribunal would immediately agree to make an award in terms of the settlement between the parties. It was stated before us at the bar that innumerable awards had been made by industrial tribunals in terms of the settlements between the parties. In this connection we may incidentally refer to the provisions of section 7(2)(b)of the Industrial Disputes (Appellant Tribunal) Act, 1950 (XLVIII of 1950), which expressly refer to an award or decision of an industrial tribunal made with the consent of the parties. It is true that this Act is no longer in force; but when it was in force, in providing for appeals to the Appellate Tribunal set up under the said Act, the legislature had recognized the making of awards by the industrial tribunals with the consent of the parties. Therefore, we cannot accept the argument that cancellation of reference would be necessary in order to give effect to the amicable settlement of the dispute by the parties pending proceedings before the industrial tribunal."

Whether the settlement is tainted or unfair has to be decided if specific reference is made on that aspect. In National Engineering Industries Ltd.

v. State of Rajasthan and Ors., [2000] 1 SCC 371 at para 24 it was observed as follows:-

"It will be thus seen that the High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute and none apprehended which could be the subject-matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the Industrial Tribunal (sic dispute) which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended the appropriate Government lacks power to make any reference. A settlement of dispute between the parties themselves is to be preferred, where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award. Settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be the subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the Conciliation officer must be fair and reasonable. A settlement which sought to be impugned has to be scanned and scrutinized. Sub-sections (1) and (3) of section 18 divide settlements into two categories, namely, (1) those arrived at outside the conciliation proceedings, and (2) those arrived at in the course of concillation proceedings. A settlement which belongs to the first category has a limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has an extended application since it is binding on all the parties to the industrial disputes, to all others who were summoned to appear in the concillation proceedings and to all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter. A settlement arrived at in the course of concillation proceedings with a recognized majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. The recognized union having the majority of member is expected to protect the legitimate interest of the labour and enter into a settlement in the best interest of the labour. This is with the object to uphold the sanctity of settlement reached with the active assistance of the Concillation Officer and to discourage an individual employee or a minority union from scuttling the settlement. When a settlement is arrived at during the concillation proceedings it is binding on the members of the Workers' Union as laid down by Section 18(3)(d) of the Act. It would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be, members of unions that are signatories to such settlement under Section 12(3) of the Act. The Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. ''This principle of industrial democracy is the bedrock of the Act,'' as pointed out in the case of P. Virudhachalam v. Lotus Mills, [1998] 1 SCC 650. In all these negotiations based on collective bargaining the individual workman necessarily recedes to the background. Settlements will encompass all the disputes existing at the time of the settlement except those specifically left out."

The position was recently examined in State of Uttaranchal v. Jagpal Singh Tyagi Civil Appeal No. 6505 of 2004 decide on 31st August, 2005. It was held as follows:

> "Learned counsel for the appellant State submitted that there was nothing on record to show that there any pressure put on the

> respondent employee or that undue influence was exercised. The conclusion was arrived at without pleadings in this regard. For the first time in the counter affidavit filed before the High Court, stand to that effect was taken. Without any material to support the contention, the High Court held that the settlement was not proper and in order to frustrate the order passed by the High Court, the same was arrived at. The effect of the affidavits and the undertaking was totally ignored.''

We find there was really no issue raised regarding fairness of the settlement. The Tribunal as well as the High Court came to conclusions without any material that settlements were not fair. As noted in National Engineering case (supra) and State of Uttaranchal's case (supra) there has to be a specific reference in this issue which was not there before the Tribunal and in any event no material was placed or any positive stand taken by any workman.

In the aforesaid background the orders of the learned Single Judge and the Division Bench of the High Court as well as that of the Tribunal are set aside. The Tribunal shall decide the matter within six months from the date of receipt of a copy of the judgment. If however, a competent person raises a dispute regarding fairness of the settlement within a month from today before the appropriate Government with a copy of our judgment the same shall be examined within two months from the date the dispute is raised. It shall take a decision whether a reference is called for. We make it clear that we have not expressed any opinion on the desirability or otherwise of making the reference.

Needless to say while deciding the question both on the desirability of making the reference or answering the reference the appropriate Government and the Tribunal, as the case may be, shall examine the locus standi of person seeking reference and/or the acceptability of the stand.

At this juncture it is to be noted that the Tribunal dealt with the cases which are the subject-matter of CA Nos. 4381 and 4382 of 2005, by treating them at par with other cases though there was no settlement in those cases. The Tribunal shall deal with these tow cases separately.

The appeals are accordingly disposed of with no order as to costs.