PETITIONER:
INDIAN OXYGEN LTD.

Vs.

RESPONDENT:
THE WORKMEN AS REPRESENTED BY INDIAN OXYGEN KARAMCHARI UNION

DATE OF JUDGMENT09/01/1979

BENCH:
SHINGAL, P.N.
BENCH:
SHINGAL, P.N.
KAILASAM, P.S.

CITATION:
1979 AIR 1196 1979 SCR (2) 911
1979 SCC (3) 291
CITATOR INFO :
R 1980 SC 125 (4)

ACT:
U.P. Industrial Disputes Act, 1947 (28 of 1947) Ss. 2(f), 3(d), 4K, 6B, 6I, 7(ii)-Industrial dispute-Tests for calling a dispute an "industrial dispute" -Establishment had a union affilated to a Federation and a non-affiliated union-Employer entered into settlement with affiliated union-Non-affiliated union not a party to such settlement-Dispute raised by a non-affiliated union on the same point-If an industial dispute.

HEADNOTE:
Industrial Disputes Act, 1947 (14 of 1947) S. 18-Applicability of.

The appellant company had its establishments in a number of States in the country. In its establishment at Kanpur there were two unions, one of which, the Shramik Sangh, was affiliated to the Federal Union comprising of some of the trade unions in the various establishments while the other, the Karamachari Union, was not. A demand relating to revision of dearness allowance among others, was raised by both the Unions at Kanpur. The Shramik Sangh and the appellant entered into a settlement. Karamchari Union which was not a party to the settlement, made an application to the State Government to constitute a conciliation board for reference of the dispute. The Board was constituted. In the meantime, however, to bring the settlement within the purview of the U.P. Industrial Disputes Act the Shramik Sangh applied for the constitutation of a conciliation board. A conciliation board was constituted and the memorandum of settlement arrived at between the parties was registered even though the dispute on the same point raised by the Karamchari Union was pending before the Conciliation Board all the while. The dispute raised by the Karamchari Union was, therefore, referred to a Tribunal under s 4K of the Act.

The Tribunal rejected the appellant's contention that it had no jurisdiction to adjudicate on the dispute.

On appeal to this Court it was contended that it was implicit in the various provisions of the U.P. Act that a settlement arrived at before a Conciliation Board by a Union

of the majority of workmen was binding on all the workmen and that in the absence of a provision like s. 18 of the Industrial Disputes Act, 1947 it was not permissible for the Karamchari Union to contend that the settlement would bind only the members of the Shramik Sangh and in any event reference of the dispute to a Tribunal was without jurisdiction.

Dismissing the appeal,

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HELD: 1. The State Government rightly took the view that the controversy raised by the Karamchari Union was an industrial dispute. [922 G-H]

2. A reading of the relevant provisions of the U.P. Industrial Disputes Act, 1947, clearly shows that there is nothing in the Act to require that the dispute

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or difference should be raised by all the workmen of the industry, or by everyone of them, or even by a majority of them. It is enough if the controversy is between the employer on the one side and workmen on the other. There is also nothing in the Act to require that the workmen raising the controversy should form a majority of the employees, the reason being that where it is found that the controversy affects, or will affect, the interests of workmen as a class, the law envisages that, in the interest of industrial peace, it should be examined and decided in one of the modes provided by it. [917 D-F]

3. An individual dispute cannot, however, be said to be an industrial dispute unless the other workmen associate themselves with it. No hard and fast rule can be laid down to decide when and by how many workmen an industrial dispute could be raised within the meaning of the Act, or whether a minority union or even an unrecognised union, could raise an industrial dispute. It is enough if there is a potential cause of disharmony which is likely to endanger industrial peace, and a substantial number of workmen raise a dispute about it, for then it is permissible to view it as an industrial dispute within the meaning of clause (1) of s. 2 of the Act, and to refer it for adjudication to a tribunal. [917 F-H]

4. The settlement arrived at with the Federal Union did not bind the Karamchari Union as it was not a party to it and was not affiliated to the Federal Union. Section 18 of the Central Act provides that a settlement arrived at by agreement between the parties otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement. [918 E]

5. Moreover, the settlement arrived at with the Shramik Sangh was under the provisions of the U.P. Act and, therefore, s. 18 of the Central Act had no application. There is no provision similar to it in the U.P. Act. [918 G]

6. There was no occasion for invoking s. 7 of the U.P. Act. That section is mainly intended to serve the purposes contemplated by s. 3 of the Act, namely, securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment etc. It cannot therefore be said that the settlement arrived at by the Sangh became binding on all workmen including the Karamchari Union which was not a party to it nor is there any other provision in the Act or the Rules making the settlement binding on the Karamchari Union. Nor again can it be said that s. 3(d) of the U.P. Act justifies the argument that merely because a union, consisting of a majority of workers, can represent all the workmen, the settlement arrived at before a

conciliation board would bind those who are not parties to it. [919 B, C, F-G]

7. In the absence of any prohibitory provision in the Act it cannot be said that the State Government had no jurisdiction to make a general reference under s. 4K of the U.P. Act merely because the settlement was made by a majority union and was binding on the Shramik Sangh. The Tribunal has found it as a fact that the Karamchari Union represented a substantial number of the workmen of the company at Kanpur, and there is no reason why they should be debarred from raising a dispute for the benefit of all the workmen as a class. It is well recognised, that "collective bargaining" can take place between the employer and a bona fide labour union and there is nothing on the record to show that the Karamchari Union was not a bona fide union. [920 A-C]

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In the instant case the Shramik Sangh entered into the settlement in collusion with the company and the Conciliation Board finalised the settlement even though the Karamchari Union's dispute was still pending. No effort was made to make it a party to the proceedings. Although, to begin with, a both the Shramik Sangh and the Karamchari Union were opposed to the settlement earlier arrived at by the Federal Union the Shramik Sangh changed its stand and endorsed the settlement of the Federal Union when it was placed on the notice board. The Tribunal also found as a fact that the settlement was not even put on the notice board of the company. In these circumstances if the State Government had decided to make a reference of the dispute to the Tribunal it could not be said that it did not apply its mind to the controversy or committed an illegality in doing so. [920 H-921 C]

8. Even assuming that the earlier settlements were in the nature of a package deal arrived at between the company and the Federal Union it cannot be said that there was any legal bar to the reference of the dispute regarding one particular item of the package deal for adjudication by the tribunal so as to vitiate the reference. The company brought this aspect of the matter specifically to the notice of the State Government. The point does not, however, relate to the jurisdiction or the maintainability of the reference under s. 4K for it is essentially a matter for the Tribunal's examination with due regard to the evidence before it. [921-F-G]

Herbertsons Ltd. v. Workmen of Herbertsons Ltd. & Ors. [1977] 2 SCR 15 and New Standard Engg. Co. Ltd. v. M. L. Abhyankar & Ors., [1978] 1 L.L.J. 487; held inapplicable.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2335 of 1978.

Appeal by Special Leave from the Judgment and Order dated 14-7-78 of the Industrial Tribunal U.P. in Adjudication Case No. 15/77.

F. S. Nariman, O. C. Mathur and D. N. Misra for the Appellant. M. K. Ramamurthi, Jitendra Sharma and Janardan Sharma for the Respondent.

The Judgment of the Court was delivered by

SHINGHAL J.-This appeal by special leave is directed against the order of Industrial Tribunal (III) U.P. at Kanpur dated July 14, 1978, deciding the following two preliminary issues which were raise by the Indian Oxygen

Ltd. (hereinafter referred to as the Company)

"(1) Whether present dispute is not an industrial dispute in the light of the objections raised by the employers in paragraph (1) of their written Statement?

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(2) Whether the present Order of Reference is bad in law in the light of the objections raised by the employers in paragraph (1) of their Written Statement?"

The Company employed some 5400 workmen in its establishment in West Bengal, Bihar, U.P., Assam, Punjab, Delhi, Maharashtra, Gujarat, Tamilnadu, Andhra Pradesh, Karnataka and Kerala. There were several recognised trade unions of the workmen. The All-India Federation of Indian Oxygen Employees Union (hereinafter referred to as the Federal Union) was the recognised federation of some of the trade unions from 1973 onwards. The Indian Oxygen Shramik Sangh (hereinafter referred to as the Shramik Sangh), which represented some of the workmen at Kanpur, was affiliated to the Federal Union. There was another union known as the Indian Oxygen Karamchari Union (hereinafter referred to as the Karamchari Union) which was registered much earlier but its constitution was revised because of the merger of two other unions in it and was approved by the Registrar of Trade Unions on May 10, 1978. It was not a member of the Federal Union.

The Federal Union raised a charter of demands in February 1973 of all India nature and a settlement was arrived at on June 22, 1973, according to which the demand for revision of pay scales was to be taken up for discussion at a mutually convenient date. A similar settlement was made with the Shramik Sangh on November 22, 1973. It was followed by negotiations and an order was made for the constitution of a Conciliation Board under section 3(d) of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the U.P. Act). A memorandum of settlement was drawn up on April 30, 1974 between the Company and the Shramik Sangh. It was agreed, interalia, that the question of revision of the dearness allowance of the Kanpur unit employees would be negotiated by the Company with the Federal Unit and/or the Union on or before April 1, 1975.

In the meantime, the Karamchari Union made on application on January 23, 1975, for the constitution of a Conciliation Board under section 3(d) of the U.P. Act and the Board was constituted by an order dated January 30, 1975. The Company raised objections to the constitution of the Board on February 24, 1975, but the proceedings were commenced by the Board on February 26, 1975, and March 19, 1975 was fixed for appearance. The Company however proceeded with its efforts for a settlement with the Federal Union, and entered into a settlement with it on June 30, 1975. In order to bring it under the purview of the U.P. Act, the Shramik Sangh applied on

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July 18, 1975, for the constitution of a Conciliation Board under that Act and a Conciliation Board was constituted on July 29, 1975. A memorandum of settlement about the dearness allowance was drawn up with the Shramik Sangh on August 27, 1975; in accordance with rule 5A of the U.P. Industrial Disputes Rules, 1957, in Form IA, even though the dispute regarding the variable dearness allowance, which had been raised by the Karamchari Union earlier, was pending all the while. The settlement with the Shramik Sangh made a specific reference to the all-India Federation settlement which had

been made on June 30, 1975. That settlement with the Federal Union was in fact annexed to the settlement with the Shramik Sangh and was treated as a settlement under the U.P. Act.

The dispute regarding the variable dearness allowance which had been raised by the Karamchari Sangh by its application dated January 23, 1975 for the constitution of a Conciliation Board, did not however bear fruit. Moreover the settlement which had been reached between the Company and the Federal Union was opposed by the Shramik Sangh and the Karamchari Sangh. The Conciliation Officer did not therefore pass an order for the registration of the aforesaid settlement. The Shramik Sangh, which had claimed dearness allowance according to the Kanpur cost of living index, however changed its stand and, as has been stated, it filed a memorandum of the settlement on August 27, 1975. These facts are not in dispute before us.

It was in these circumstances that the State Government made an order on May 23, 1977, referring the dispute between the Company and the Karamchari Sangh for adjudication under section 4K of the U.P. Act. The precise matter of dispute was the question whether the dearness allowance payable by the Company to its workmen should be revised and linked with the consumer price index for the industrial workers at Kanpur computed by the Labour Bureau at Simla and, if so, from what date and with what other details.

The Company filed a written statement in which it raised preliminary objections to the maintainability of the reference. That gave rise to the two issues mentioned above and as they have been found against the Company by the impugned order of the Tribunal, it has come up in appeal to this Court.

It has been argued by Mr. Nariman, learned counsel for the Company, that it is implicit in the various provisions of the U.P. Act that a settlement arrived at before a Conciliation Board, by a union of a majority of the workmen, is binding on all the workmen. Reference in this connection has been made to the Preamble and sections
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2(t), 3(d), 6B, 6-1, 7(ii) of the U.P. Act, rules 5A and 40 and Forms 1A and III of the U.P. Industrial Disputes Rules, and to clauses (4) and (8) of the order dated December 3, 1957 made under section 3(d) of the U.P. Act. It has further been argued that the power to enforce a settlement under section 7 of the U.P. Act shows that the settlement is meant to be binding on all the workmen. It has also been argued that once a valid settlement is made, it is not permissible to refer a dispute (covered by it) for adjudication. An attempt has been made to support that contention with reference to some decisions. Learned counsel has gone to the extent of arguing that as there is no provision in the U.P. Act similar to sub-sections (1) and (3) of section 18 of the Industrial Disputes Act, 1947, (hereinafter referred to as the Central Act), it is not permissible for the Karamchari Union to contend that the settlement which had been made with the Shramik Sangh will bind only the workmen who were members of that Sangh. In the alternative, it has been argued that the State Government did not have the jurisdiction to make a valid reference under section 4K of the U.P. Act as the demand for variable dearness allowance had been settled through the Shramik Sangh in respect of a majority of the workmen of the Kanpur unit and was binding on the members of that Union. Then it has been argued that the settlement which had been made with the Federal Union on June 30, 1975 was by itself and independently of the U.P. Settlement (with the Shramik Sangh), a settlement under

section 18(1) of the Central Act and was binding on the members of the Shramik Sangh as it was affiliated to the Federal Union and for that reason also it was not permissible to make a reference for adjudication in respect of all the workmen including those who belonged to the Shramik Sangh. It has further been argued that the settlement of June 30, 1975 with the Federal Union would have been operative even without the Shramik Sangh settlement and section 18(1) of the Central Act would be applicable to it as it was not a settlement during the course of conciliation proceedings and was binding on the Federal Union under section 36(1)(a) and (b) of the Central Act and it was not permissible to make a general reference covering even the workmen belonging to a union affiliated to the Federal Union. It has been urged that the reference should have been restricted to those workmen who were not governed by the settlement of June 30, 1975 or that settlement should also have been referred to the Tribunal if it was felt by the State Government that it was not valid or fair. Lastly, it has been argued that the settlements of June 30, 1975 and August 27, 1975 were in the nature of package deals arising out of collective and mutual bargaining and a reference relating to one term of the deals
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was invalid. Reference for this proposition has been made to Herbertsons Limited v. Workmen of Herbertsons Limited and others(1) and New Standard Engg. Co. Ltd. v. M. L. Abhayankar and others(2).

Thus the question for consideration before us is whether the State Government had the authority or jurisdiction to make the order dated May 23, 1977, under section 4K of the U.P. Act referring the dispute regarding variable dearness allowance for adjudication to the Tribunal. The two issues before the Tribunal related to that basic question and it will be sufficient for us to examine it in the facts and circumstances of this case and the law bearing on it.

Section 4K of the U.P. Act provides that where the State Government is of opinion that any industrial dispute exists or is apprehended, it may refer the dispute or any matter appearing to be connected with, or relevant to the dispute to a Tribunal. Clause (1) of section 2 of that Act defines an industrial dispute to mean, inter alia, any dispute or difference between employers and workmen which is connected with the terms of their employment. The expression "workmen" has been defined in clause (z) of section 2 to mean, speaking generally, "any person" employed in any industry in the capacity mentioned therein. There is nothing in the Act to require that the dispute or difference should be raised by all the workmen of the industry, or by every one of them, or even by a majority of them. It is enough if the controversy is between the employer on the one side and workmen on the other. So also, there is nothing in the Act to require that the workmen raising the controversy should form a majority of the employees. The reason appears to be that where it is found that the controversy affects, or will affect, the interest of workmen as a class, the law envisages that, in the interest of industrial peace, it should be examined and decided in one of the modes provided by it. An individual dispute cannot however be said to be an industrial dispute unless of course the other workmen associate themselves with it. No hard and fast rule can possibly be laid down in such circumstances to decide when and by how many workmen an industrial dispute can be raised within the meaning of the Act, or whether a minority union,

or even an unrecognised union, can raise an industrial dispute. It is enough if there is a potential cause of disharmony which is likely to endanger industrial peace, and a substantial number of workmen raise a dispute about it, for then it is permissible to take the view that it is an industrial dispute within the meaning of clause (1) of section 2 of the U.P. Act, and to refer it for adjudication to a Tribunal. Reference in this connection may be made to the Tribunal's finding

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of fact that although the Karamchari Union was not a recognised union and it was not a member of the Federal Union, it had a "substantial number of workmen of the concern as its members." We have no doubt therefore that the State Government rightly took the view that the controversy raised by the Karamchari Union was an industrial dispute.

It cannot be gainsaid that the dispute in the present case was raised by the Karamchari Union and they made an application for the constitution of a Conciliation Board as far back as January 23, 1975, and the Board was constituted on January 30, 1975. It will be recalled that the Company filed its objections before the Board on February 24, 1975, and the Board fixed March 19, 1975 for their consideration. It is not in controversy before us that the conciliation effort met with failure, and the point for consideration is whether the State Government lost its power to make a reference under section 4K of the U.P. Act merely because of the settlement dated June 30, 1975 between the Company and the Federal Union under the Central Act and the settlement dated August 27, 1975 between the Company and the Shramik Sangh in the conciliation proceedings under the U.P. Act.

Section 18 of the Central Act deals with the binding effect of settlements and awards. Sub-section (1) of that section provides that a settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. The settlement dated June 30, 1975, with the Federal Union did not therefore bind the Karamchari Union as it was not a party to it and was not affiliated to the Federal Union.

It is true that the Shramik Sangh made an application for the constitution of a Conciliation Board on July 18, 1975, and a Board was constituted on July 29, 1975. That in fact led to a settlement with the Shramik Sangh on August 27, 1975. But that took place under the provisions of the U.P. Act and Mr. Nariman has himself pointed out the proceedings in fact took place under rule 5A of the U.P. Industrial Disputes Rules, 1957 and the memorandum of settlement was prepared in Form 1-A. Sub-section (3) of section 18 of the Central Act could not therefore be attracted to that settlement and there is no provision similar to it in the U.P. Act.

We have gone through section 7(ii) of the U.P. Act and the rules made thereunder, as well as the order dated December 31, 1957, on which much reliance has been placed by Mr. Nariman. Clause (ii) of section 7 deals with the power of the State Government to

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enforce, by order in the prescribed manner, for such period as may be specified, the whole or any part of an agreement reached in conciliation proceedings between the parties to an industrial dispute. But the section, it appears, is mainly intended to deal with an order passed under any other enactment, and is meant to serve the purposes contemplated in section 3, namely, for securing the public safety or

conveniences or the maintenance of public order or supplies and services essential to life of the community, or for maintaining employment etc. It has not been urged before us that there was any such occasion for invoking section 7. A mere reference to that section cannot therefore sustain the argument that the settlement dated August 27, 1975, became binding on all workmen including the Karamchari Union, which had nothing to do with it and was not even a party to it, and that the Union was precluded from raising an industrial dispute and the State Government was precluded from referring it for adjudication under section 4K of the U.P. Act. Rule 5A of the U.P. Industrial Disputes Rules and the preparation of the memorandum of settlement in Form 1-A could not therefore justify the argument to the contrary. So also, a reference to Form III of the Rules which provides that a person who contravenes or attempts to contravene, any provision of the State Government's order shall be liable, on conviction, to fine or to imprisonment not exceeding three years or both, is hardly of any avail for obvious reasons. In fact Mr. Nariman has not found it possible to support his argument about the binding nature of the settlement dated August 27, 1975, on the basis of such a penal provision in a form appended to a set of Rules, and we need not examine it any further.

We have gone through the order which has been made under section 3(d) of the U.P. Act, on paragraph 8 of which considerable reliance has been placed by Mr. Nariman. It was made on December 31, 1957, and was to remain in force for one year under paragraph 15. Even otherwise, paragraph 8 merely makes provision for impleading other workmen, or concerns, or a union, in proceedings before a Conciliation Board. It provides that it would be enough to implead a union covering the majority of such "concern or workmen". But such a provision cannot justify the argument that merely because a union consisting of a majority of workers can represent all the workmen, the settlement made in the Conciliation Board will bind those who are not parties to it.

As regards the alternative argument of Mr. Nariman that as the settlement dated August 27, 1975, was made by a "majority union", it was, at any rate, binding on the members of the Shramik Sangh, and

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that the State Government had no jurisdiction to make a general reference under section 4K of the U.P. Act, it will be sufficient to say that no such bar could possibly be raised in the absence of any prohibitory provision in the law. As has been stated, the Tribunal has found it as a fact that the Karamchari Union represented a substantial number of the workmen of the Company at Kanpur, and there is no reason why they should be debarred from raising a dispute for the benefit of all the workmen as a class. It is well recognised, and cannot be disputed, that "collective bargaining" can take place between the employer and a bona fide labour union, and there is nothing on the record to show that the Karamchari Union was not a bona fide union. In fact it may well be said that as the Shramik Sangh was an affiliated unit of the Federal Union, it was not permissible for it to make the application dated July 18, 1975, for the constitution of a Conciliation Board to resolve the dispute and to enter into the memorandum of settlement dated August 27, 1975. The Tribunal has examined the file (No.391 of 1975) of the Conciliation Board case relating to the industrial dispute raised by the Karamchari Union on January 23, 1975, about the payment of the dearness allowance to the

workers of the Kanpur unit according to the cost of living index for industrial workers at Kanpur, and the file of the other conciliation case relating to the similar dispute raised by the Shramik Sangh on July 18, 1975, and has stated the factual position as follows-

> "It is clear from the latter file that the management of the Kanpur unit of the Company had applied on 29-7-75 to the Regional Conciliation Officer for the registration of the settlement reached between the company and the All India Federation of Indian Oxygen Employees Unions on 30-6-75 but on account of the pendency of C.B. Case No.391/75 some information was asked to be furnished by the company which the company did not furnish. On the other hand, the representatives of the Shramik Sangh and the Kanpur unit of the company appeared before the Regional Conciliation Officer, Kanpur on 27-8-75 and submitted a brief memorandum of settlement making applicable to the Kanpur unit the settlement which had been reached between the company and the Federation on 30-6-75."

It will thus appear that the Shramik Sangh entered into the settlement dated August 27, 1975 in collusion with the Company and that the Conciliation Board allowed the memorandum of settlement to be filed and finalised even though the Karamchari Union's dispute dated January 23, 1975 was pending and no effort was made to make it a
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party to the proceedings which were taken at the instance of the Shramik Sangh. It is important to remember in this connection that although the settlement which had been made by the Federal Union on June 30, 1975 was opposed by both the Unions when it was placed on the notice board of the Kanpur unit, the Shramik Sangh changed its stand and filed a memorandum of settlement on August 27, 1975 endorsing the settlement which had been made with the Federal Union on June 30, 1975. The Tribunal has also stated it as a fact that the settlement dated August 27, 1975 was not even put on the notice board of the Company. If, therefore, the State Government decided to make a reference of the dispute to the Tribunal in these circumstances, it cannot be said that it did not apply its mind to the controversy or committed an illegality in doing so.

It has to be appreciated that it would not have been practicable for the State Government to exclude the workmen who were members of the Shramik Sangh (at Kanpur) from the scope of the reference under section 4K of the U.P. Act and to confine the dispute to the rest of the workmen, for that might have given rise to one pay structure for one section of the workmen (represented by the Karamchari Union) and another for the other workmen (represented by the Shramik Sangh). At any rate, this was not a matter at the threshold, and is essentially for the Tribunal to examine on the merits of the controversy.

We have also considered the other argument of Mr. Nariman that as the settlements dated June 30, 1975 and August 27, 1975 were in the nature of package deals, and arose out of collective bargaining, it was not permissible for the State Government to make a reference to the Tribunal about one item of that deal, namely, that relating to the variable dearness allowance. Our attention in this connection has been invited to the statement of the Company's Personnel Manager V. John in which reference has been made to the nature and the contents of the package. The point does not however relate to the jurisdiction or the maintainability of the reference under section 4K of the

U.P. Act, for it is essentially a matter for the Tribunal's examination with due regard to the evidence before it. It appears from the record that the Company brought this aspect of the matter specifically to the notice of the State Government in its representation dated April 20, 1976, and it cannot be said that it was not before the Government when it made the impugned order of reference dated May 23, 1977. At any rate, it cannot be said that there is any legal bar to the reference of the dispute regarding one particular item of a
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package deal for adjudication by the Tribunal so as to vitiate the reference at the threshold.

We have gone through the two cases which have been cited by Mr. Nariman in this connection. Herbertsons Ltd. (supra) was a case where all the workers of the Company had accepted the settlement and received the arrears and the emoluments according to it.In fact it was in the facts and circumstances of that case that this Court took the view that it was not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Even so, this Court expressed the view that if the objectionable part was shown to outweigh all the other advantages, the Court would be slow to hold the settlement unfair and unjust. Herbertsons is therefore no authority for the argument that a part of a package deal cannot be the subject matter of a reference for adjudication by the Tribunal. New Standard Engineering Co. Ltd (supra) was also a different case, for there the justness and fairness of the settlement was examined with reference to the situation as it stood on the date on which it was arrived at, and it cannot also avail the argument of Mr. Nariman about the illegality of a reference merely because it relates to a part of a package deal. That is essentially a matter for the Tribunal to examine and adjudge on the merits of the reference.

Lastly, Mr. Nariman has argued that as the members of the Karamchari Union accepted the benefits of the settlement which had been made with the Federal Union on June 30, 1975, they were precluded from obtaining the order of reference dated May 23, 1977. The argument is futile because the Tribunal has specifically stated in its order under appeal that even the settlement dated August 27, 1975 was not put on the Company's notice board and the emoluments of the workmen were increased from July 1975. It has further been stated that the members of the Karamchari Union "took the increase but under protest vide the Union's letter dated 28-7-75 which is annexure D to the Workmen's written statement."

There is thus no force in the argument which have been advanced for the purpose of showing that the settlements dated June 30, 1975 and August 27, 1975 debarred the State Government from making the impugned order of reference dated May 23, 1977 under section 4K of the U.P. Act or that the dispute was not an industrial dispute and the order was otherwise bad in law. The appeal fails and is dismissed with costs.

N.V.K. Appeal dismissed.
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